35th Annual Report of the
American Civil Liberties Union
July 1, 1954 to June 30, 1955

CLEARING THE MAIN CHANNELS

AMERICAN CIVIL LIBERTIES UNION
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ARTHUR GARFIELD HAYS

December 12, 1881 — December 14, 1954



"In the fight for civil liberties sometimes you win — but in the long run, you never lose."

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DEMOCRACY IS THE OPPORTUNITY TO GO ON WORKING

PATRICK MURPHY MALIN
Executive Director

In the November, 1955, issue of *Fortune*, Chief Justice Earl Warren has a memorable article on "The Law and the Future." It is not, however, limited to the law, or to the future. The Chief Justice deals with the whole business of living in a free society under a democratic government, and heeding his advice would produce a much better present as well as a much better future.

He says, among other things: "Solon, asked how justice could be secured in Athens, replied, 'If those who are not injured feel as indignant as those who are.' This is especially good advice at a time when our Bill of Rights is under subtle and pervasive attack, as at present. The attack comes not only from without, but from our own indifference and failure of imagination. Minorities whose rights are threatened are quicker to band together in their own defense than in the defense of other minorities. The same is true, with less reason, of segments of the majority. . . .

"The pursuit of justice is not the vain pursuit of a remote abstraction; it is a continuing direction of our daily conduct. Thus it is that when the generation of 1980 receives from us the Bill of Rights, the document will not have exactly the same meaning it had when we received it from our fathers. We will pass on a better Bill of Rights or a worse one, tarnished by neglect or burnished by growing use. If these rights are real, they need constant and imaginative application to new situations.

"In the present struggle between our world and Communism, the temptation to imitate totalitarian security methods is a subtle temptation that must be resisted day by day, for it will be with us as long as totalitarianism itself. . . . But the Constitution exists for the individual as well as for the nation. I believe it will prove itself adaptable to this new challenge."

One fundamental and permanent trouble in meeting that constitutional challenge is that the American people, like all other people, have a great many other intense desires besides the three civil liberties—freedom of inquiry and communication, fair procedures, and non-discriminatory treatment on the basis of individual merit, blind to race,

color or religion. All of us, to some extent or other, want bread and circuses; every dictatorship has been able to count on that for cruel exploitation, and every democracy must reckon with it for minimum survival. Even above the level of bread and circuses, we Americans specialize in wanting too much too quickly.

So we are always tempted to endanger ourselves by neglecting, or actively blocking, those three main channels of political liberty. But that imperils not only the enjoyment of the civil liberties themselves, but also everything else. If we have freedom of inquiry and communication, fair procedures and equality before the law, we have the best chance to achieve or defend or retrieve other values. On the other hand, even if we possess everything else our hearts' desire, but are losing those primary and central liberties, then we stand in peril of losing all else too—sooner or later. Therefore, all of us would better keep clearing those main channels.

How do we Americans stand in that essential work, as we end this year and look ahead? Well, our high courts and principal executive agencies are continuing to do a good job in clearing the main channel of equality before the law. The Interstate Commerce Commission has ordered that racial segregation on interstate trains and buses, and in station waiting rooms serving their passengers, must end by next January 10. But a terrifying lot of unfinished business will face us for a long time to come. Emmett Till is kidnapped and killed in Mississippi, neo-Klan organizations exert various kinds of coercion on Negroes in many parts of the South; and, in the North—whose often holier-than-thou bluff is being called by the rapid increase of its Negro population—discrimination in public housing takes on alarming proportions. Nor do we have all the time in the world to attend to this unfinished business; Africa and Arabia and Asia are looking ever more closely at us, and they hate much of what they see.

The federal courts are steadily increasing their effectiveness in clearing the second main channel of fair procedures. District Court Judge Youngdahl, in the most recent of a series of fine decisions on passports, made on November 22 this widely and profoundly significant statement: "When the basis of action by any branch of the Government remains hidden from scrutiny and beyond practical review the seeds of arbitrary and irresponsible government are sown. More and more the courts have become aware of the irreparable damage . . . wrought by the secret informer and the faceless tale-bearer." But here too we can never hope soon and finally to be out of the woods. Not only does the increase of governmental activity—federal, state and municipal—create a host of problems in the use of necessary administrative discretion in applying rules and regulations to civil service employees and to ordinary citizens. But bigger and bigger cities breed more and more

organized crime, and hard-pressed police forces increasingly want to employ wiretapping and other "short-cuts." We defenders of civil liberties may say, as we should: "No wiretapping; we'll take the risk of such crime as cannot be combatted by other methods." But it will take a long time to convert people in general to that position, unless we also actively support the development and use of what we regard as constitutional and wise methods of law enforcement.

Clearing the third main channel—most important of all—of free inquiry and communication is always the hardest job of all. We can rejoice over relatively uninterrupted progress in getting rid of official prior censorship of motion pictures, and ever-growing resistance to private pressure-group attempts to enforce conformity by boycott throughout the mass communication field. But it will be many a long year before we can be comfortable about freedom in the public schools and colleges and universities—freedom from the threat of government domination—national or state—as a condition of government aid, and freedom from harassment by each sub-group in a local community which fails to understand the fundamental need for variety and demands instead the impossible and disastrous—that the schools should teach everything which that sub-group wants, and nothing which it does not want. And (as shown in the Allen Raymond report which the Union released on November 4) it will be just as long before we can be comfortable about newspaper access to government news—from the national Department of Defense through the state road fund commissions to the county courthouse officials.

We can thank our lucky stars for enterprising and responsible reporters and editors and publishers, and for dedicated high court judges; but, in Lincoln's words, it is necessary that we continue "dedicated to the great task remaining before us."

The text of this *Report* describes the work of the American Civil Liberties Union from July, 1954, to June, 1955, in support of that dedication. The highlights include: a reasoned study of comic book censorship, defense of the First Amendment rights of persons who have properly resisted improper legislative inquiry, constructive criticism of the government security program (through the testimony of our Board chairman, Ernest Angell), success in forcing the withdrawal of "How to Spot a Communist" (a vague and loosely drawn Army-Air Force pamphlet infringing on free speech), further testing of the Gwinn Amendment housing loyalty oath, attack upon state sedition laws (for example, the Braden and Nelson cases), attack upon the Reece Committee's blast against the foundations, successful action in calling for revision of the ROTC loyalty oath, effective intervention in state-church problems in California, Illinois and Pennsylvania, and some degree of success against Post Office censorship.

Also: constant vigilance, across the nation, with respect to police brutality and illegal action, re-affirmation of our stand against wire-tapping, frequent intervention in cases involving due process in the courts and before administrative agencies, and particularly effective intervention in passport and army discharge cases. And also: unremitting pressure against discrimination in places of public accommodation and in transportation, concern with the civil liberties of American Indians, and continued representation of American civil liberties principles in the UN and, by informal education, before other nations.

These are some of the chief successful actions—through the work of the national office and the affiliates. But we have also met some defeats and there is no sign of any reduction in the mountain of work to which we must bend our will and strength.

The American Civil Liberties Union will soon have 40,000 members (five times what it had in 1945) and organized local existence in forty of our largest cities. But can justice be secured if these figures exhaust the roll of "those who are not injured [but] feel as indignant as those who are"?

None of us at the national office believe in size for the sake of size. But the Union is still far too small to do what it needs to do in a country as big as the United States. And it is you reading this *Report* who most of all have the power to determine whether the ACLU will grow enough, in income and informed membership and organized local existence.

Your reward is like ours, as well described by H. G. Creel in his book, *Confucius: The Man and the Myth:* "Confucius seems to have been aware that the greatest battle of democracy is not a dramatic contest against evil, but the quiet struggle that goes on within the heart of the individual against boredom. Authoritarianism tempts him with pageantry and with final solutions to all the problems; democracy offers only simple human dignity, and a chance to work unceasingly for human happiness, with no reward save the opportunity to go on working."

Democracy is the opportunity to go on working. In order to have that opportunity, now and in the future, the main channels must be continuously cleared—by judges and executive officials and legislators, and by democracy's rulers—its citizens.

Part I. FREEDOM OF BELIEF SPEECH AND ASSOCIATION

We hold that the greatest right in the world is the right to be wrong, that in the exercise thereof people have an inviolable right to express their unbridled thoughts on all topics and personalities, being liable only for the abuse of that right.

We hold that no person or set of persons can properly establish a standard of expression for others.

From the platform of the Independence League, sponsored by William Randolph Hearst, and printed in his New York *Journal* and *American*, February 1, 1924.

CENSORSHIP AND PRESSURE DIRECTED AGAINST THE PRINTED WORD, THE STAGE AND SCREEN, AND RADIO-TV

Despite the serious problem of juvenile delinquency, the American Civil Liberties Union remains convinced that it would be a fatal step to permit censorship by law, administrative regulation, or intimidation by officials or private groups. Destruction of morality can be guarded against by laws which punish criminal acts; censorship, which is based on mere presumption that harm will occur may avert some possible evil but most certainly infringes immediately upon that right to freedom of expression which is guaranteed by the Constitution.

1. Books and Magazines

Comic Book Censorship. Throughout the country, interest has been focused during the past year on the supposed relationship of so-called "crime comic books" to juvenile delinquency. Corrective proposals have run from laws forbidding publication, or sale to minors, to self-regulation by publishers.

ACLU interest is confined to the civil liberties aspects of the proposals. First, the Union believes it should be proved beyond doubt that

crime comics produce juvenile delinquency so regularly and in such degree that the offensive publications really constitute a clear and present danger to society. This proof is not yet given; respectable authorities hold widely different views, and many proclaim their ignorance. Second, even if such a danger is demonstrated, it should be shown that no means other than censorship can offer protection. Only if these tests are met, should recourse be permitted to a "cure" which might very well fail and would unquestionably negate the First Amendment.

The dangers in comic book censorship are many and grave. It would be difficult to limit censorship to the portrayal of unsuitable misdeeds and horrors. Historical experience has shown that private groups who seek to inculcate their particular point of view eagerly seize on the established machinery of censorship as a means of excluding contradictory ideas. Furthermore, censorship of children's reading could pave the way for censorship of adult reading material. Government censorship, established by law, would quickly destroy the climate which nurtures the minds of free men.

Another proposal—to ban crime comics to children under a certain age—might result in insoluble enforcement problems and create a "bootlegging" situation. Equally dubious is self-regulation by the industry through a publisher's code. Now actually in practice, this self-censorship appears likely to go the way of all codes; the existing list of "do's and don'ts" already includes moral prescriptions which have nothing to do with either crime or horror.

The ACLU position is not negative. On the contrary, the Union believes that guidance and education at the hands of responsible parents, churches and schools, and the observance of decent standards by individual publishers can lead children to read—and want to read—morally and culturally desirable kinds of printed material. This positive hope and an examination of the whole problem are set forth in the Union's recent pamphlet, *Censorship of Comic Books; a Statement in Opposition on Civil Liberties Grounds* (see Publications List, p. 143).

Self-appointed Censors. Throughout the country, by pronouncement from its pulpits and by the pressure of its powerful lay organizations, the Roman Catholic Church has deeply interested itself in the relation of books and magazines to moral health. Thus the National Organization for Decent Literature releases each month a list of disapproved books; the reviewing committee is made up of Catholic women. To the extent that this list is intended to instruct Catholics in the opinion of their church there can be no possible objection. But the NODL list, in its use and substance, also raises important civil liberties questions. First, many Catholic lay groups have used the list as a basis for a threatened boycott of booksellers, thus imposing the criteria of one point of view upon the whole book-buying community; second,

the list includes unquestionably serious literature by writers like Dos Passos, Hemingway, and Faulkner. Relatedly, public officials frequently ally themselves to the Catholic standards, thereby imposing the judgment of a particular church upon the public market. For example, the Police Superintendent in Bridgeport, Connecticut, asked two magazine distributing firms to remove from sale any books "appearing obscene" or "that glorify sex or crime." His action grew out of a demand by Catholic organizations for a ban on salacious literature.

While Catholic leaders have headed the drive against "immoral books," many Protestant clergymen and local PTA groups have also taken vigorous action.

The police, mistaking their professional function, sometimes also keep an eye on what Americans read. According to an article by John Lardner in *Newsweek* of March 14, 1955, twelve Detroit policemen spend their time reading and censoring books. Their opinion results in a list of proscribed books which is sent to any police department in the country that asks for it.

The New York City Bar Association approved a 1955 report which, while deploring unwarranted government censorship, found that the gravest danger to freedom of expression "lies in the case where the interference for alleged obscenity is a product of organized private action." It cites a variety of pressures that have been brought to bear by church groups and voluntary advisory groups, to boycott book dealers, and to force libraries to remove books from the shelves and to cancel subscriptions. The report condemns such private action, holding it to be an attempt to compel the whole of society to conform to the standards of one group as to what should not be read. Warning is given that "When the state acts, those injured can enjoin violation of the Fourteenth Amendment. But when a private group acts, the Constitution affords no basis for injunctive relief." The basis of the report was a study of more than 90 cases reported in 1953 alone, including repeated attempts to suppress the works of Dos Passos, Faulkner, Maugham, Steinbeck and Zola.

Conditioned Reflexes. In the spring of 1955 several public "book burnings" were planned as a way of destroying crime comic books and other material voluntarily turned in; the demonstrations were called off after ACLU protests against these "imitations of dictatorship."

Indiscriminate use of the term "obscenity," appeared in the filing of a Los Angeles taxpayer's suit seeking removal of a sculpture from a public building; the statue was called "ugly, obscene and vulgar and a travesty on art." Southern California ACLU intervened on the ground that the issue was one of taste and judgment: "Errors in judgment must be corrected through democratic processes," the Union brief said; and pointed out that "The opinion of courts concerning creative

art is more likely to be in error than the opinion of the Municipal Art Commission." This suit was dismissed.

State and Local Laws. Alaska, Connecticut, Maryland, Minnesota, Montana, Nevada, New York, Ohio, Texas, Washington now in various ways restrict or ban crime comics; similar legislation is under consideration in California, Hawaii, Iowa, New Hampshire, Oklahoma, Pennsylvania, Wisconsin.

A proposed Omaha ordinance has the merit of attempting a clear definition of a crime comic, and insists on a finding that a book "read as a whole is of an obscene nature." In Marin county, California, 15 books on school library shelves were attacked as "obscene and subversive" but restored by order of the school board; later the same books were removed in the Los Angeles schools; the Southern California ACLU noted the high incidence among those titles of books seeking to promote enlightened views on race relations.

Governor Stratton of Illinois vetoed a bill which forbade the distribution to minors of any printed matter principally made up of "criminal news, police reports, or accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust or crime." Attorney General Castle advised the governor that the law would cover: *Treasure Island* (mutiny, piracy, abduction, larceny on the high seas), *Kidnapped* (kidnapping), Sherlock Holmes stories (murder and other crimes), Poe's stories (horror), *Huckleberry Finn* (truancy, theft), the *Odyssey* (horror) and Dante's *Inferno* (excruciating torture protracted throughout eternity). Mr. Castle observed: "The intent of this Bill is excellent. However, the road to constitutional limbo is, as another famous road, paved with good intentions."

In Massachusetts numerous censorship bills have been introduced in the legislature during the past year: attempts were made to establish an official censorship body, to broaden obscenity laws, to investigate literature in general. The Civil Liberties Union of Massachusetts was heard in constant protest. Every bill received an adverse committee report and failed of passage.

A recent New York law permitting the state Supreme Court to ban the offering for sale of obscene material (as distinguished from punishing an accomplished sale) has been upheld in a June, 1955, test case. The 14-volume series, *Nights of Horror*, were held by Justice Levy to be "not sex literature as such . . . but pornography, unadulterated by plot, moral or writing style. Perverted sexual acts and macabre tortures of the human body are repeatedly depicted. . . the volumes . . . in evidence before me are obscene. . . ."

Provincial Censorship. The Georgia Board of Education reversed its professional textbook committee and rejected three textbooks for

not being in accord with the "Southern way of life." One, a songbook, changed Stephen Foster's "darkies" to "young folks" or "brothers"; the publisher offered to go back to the original, but the Board refused the book in either form.

U. S. vs. Aristophanes. The federal government suffered something of a red-faced defeat after it had impounded a rare edition copy of Aristophanes' *Lysistrata* last August. ACLU took the case to court, but the Post Office, fearing a test of the constitutionality of its practice of barring "obscene" matter from the mails, quickly lifted the ban. The ACLU brief pointed out that what was "obscene to the Postmaster General" was "in fact, the laughter of genius to 24 centuries of Western civilization. ." Further court action will be attempted to obtain a clear ruling on the authority of the Post Office.

The *Lysistrata* episode demonstrates the inevitability of individual subjective judgment in censorship cases. The play tells the story of how the women of Greece attempted to end a war by refusing sexual relations to their men until peace was concluded. Aristophanes' work is freely available in several editions in the libraries and bookstores of the United States. But this copy was illustrated by a distinguished artist, and apparently the pictures aroused the Post Office in a way beyond the power of the text.

Nudist Magazines. The U.S. Court of Appeals in Washington, D.C., has held that *Sunshine and Health* and other nudist magazines may not be denied all mail addressed to them because the Post Office has adjudged particular issues obscene on the basis of their illustrations. The ACLU friend of the court brief raised the censorship issue but the decision held only that the statutory power of the P.O. did not extend to future issues. The U.S. Supreme Court refused review. Published issues were themselves then banned and a federal District Court has upheld the action; the cases have again been appealed on the censorship issue, and the ACLU will again intervene on the constitutional point.

The whole matter of government censorship, based on moral grounds, will have a thorough airing if Senator Wiley (R., Wisconsin) goes through with his reported plan to introduce sweeping anti-pornography legislation.

The Best of All Possible Worlds. The U.S. Information Service sought $250,000 from Congress to purchase 200,000 copies of Emily Davie's *Profile of America,* but congressional critics objected to photographs of dust storms, a one-room schoolhouse, etc., and were not moved by the presence of photographs showing the advances the nation has made. Protests by the ACLU and important newspapers were based on the value of a balanced view and the implication of censorship. The money was not voted.

Security Censorship. The Commerce Department recently sponsored a plan aimed at preventing *non-secret* information reaching Iron Curtain countries, on the general theory that it would reveal American "know-how." In urging the business community of the United States to reject this idea of cooperative censorship, Patrick Murphy Malin, ACLU's Executive Director, said: ". . . it will place in the hands of the Government more and more control over the flow of information to the public. Such control can lead to a blockade of news which is vital to the public interest and to the ultimate strength of democracy—the right of the public to have access to news and information." In the spring of 1955, a series of Defense Department regulations appeared likely to go far beyond the protection of classified information and to establish a thoroughly undemocratic set of paternalistic standards; the public is to be told what is of "interest" to it, or what it needs to know—and the Government is to be the judge. The ACLU protested, and the Department announced that these standards would apply only to news which it itself originated.

Catholic Imperialism and World Freedom. This book, a flamboyant attack on the international aspects of the Roman Catholic Church, circulated freely in the U.S. from 1952 to 1954. The Post Office then declared it non-mailable (publication is in England) on the ground that under the Foreign Agents Registration Act political propaganda could be defined as including matter promoting "racial, religious and social dissension." After public notice of this ban, the Post Office reversed its ruling.

The Union is engaged in a study of the whole problem of government restrictions upon the dissemination of "non-classified" government news.

2. Newspapers and Ads

"Propaganda" Exclusion. Restriction upon the importation of foreign propaganda, discussed in last year's ACLU *Annual Report* (p. 10), continues to present a vexing problem. When scholars, libraries, and other addressees having a serious interest protest the ban, the Post Office and customs officials make a specific ruling permitting entry in each instance, thereby avoiding a test case of the constitutional issue of restraint upon inquiry. In the meantime, criticism continues from such diverse origins as the columnist George Sokolsky, the ACLU, Representative Francis E. Walter, and the American Committee for Cultural Freedom.

Although books and magazines are affected, the most important exclusion has been that of *Izvestia* and *Pravda* (just recently admitted), sent by Fourth Class mail from Russia to persons in the U.S. The 1955 Reed amendment to the Foreign Agents Registration Act (the general

source of authority for banning), now permits a registered foreign agent here to receive material from unregistered agents abroad. Prior to this amendment the Soviet newspapers were not likely to register, since they are published by a sovereign power, and thus *de facto* censorship was established.

The ACLU believes that within a short time it will be able to bring or aid in appropriate test cases which will challenge discrimination in selection as illegal, and exclusion in general as a denial of the right to read—and therefore a violation of the First Amendment.

John Donaducy of Erie, Pa. (see 1954 *Report*, p. 13) began serving his sentence for criminal libel after the U.S. Supreme Court refused to review his case. The ACLU remains convinced that the conviction seriously infringes upon the freedom of a newspaper to inform the public.

The San Francisco Public Utility Commission, controlling public transit in the California city, permitted advertising which endorsed a ballot proposition approved of by the city administration. When opponents of the proposition sought to buy available space, they were refused on the ground that it was incongruous for the city buses to carry ads attacking the administration point of view. ACLU began preparation of a mandamus action; the *San Francisco News* attacked the Commission's position, saying: "The Muni Railway belongs to all the people, not to the utility commissioners." Within 24 hours the Commission reversed its stand.

3. Stage and Screen

Burlesque. May of this year saw a curious battle in New York City when License Commissioner McCaffrey refused to issue a license permitting the Orpheum Theatre to produce burlesque shows. He ruled that if "burlesque" lived up to its name it would be an improper exhibition, and if it did not it would be a fraud upon those buying tickets. The New York Civil Liberties Union, in a friend of the court brief, argued that the refusal violated the First Amendment guarantee of freedom of expression and the Fourteenth Amendment protection against deprivation of property without due process. Furthermore, NYCLU argued, burlesque is capable of contributing to the thought of its time by its paradies, lampoons, and buffoonery. Judge Aron Steuer in N.Y. Supreme Court ruled against the License Commissioner. The judge said: "[the Commissioner's ruling] removes from the area of debate any issue as to whether [he] was or was not arbitrary and capricious. That it was is not even open to question. . . . the two main grounds for [the Commissioner's] . . action—namely, the fact that other producers of burlesque have violated statutes against decency, and use of the term 'burlesque' in connection with a performance

—have been expressly declared violative of the Federal Constitution by the highest court of a sister state [New Jersey]."

Motion Picture Censorship. Three states (Maryland, New York, Pennsylvania) and sixty cities have official censorship with full administrative paraphernalia, but in those areas, and in other locations where informal police crackdowns operate, the struggle continues. In Ohio, the lower courts have held the state censorship law unconstitutional on grounds of vagueness; a new bill passed the House but failed to emerge from Senate committee. Maryland in 1955 passed a new law attempting a clearer definition of censorable elements. Although Kansas legislation has abolished censorship, the state attorney general disagrees with the procedure by which the new law was passed and has brought a test case which would in effect reinstate censorship. A lower Pennsylvania court has reluctantly declared unconstitutional that state's pre-exhibition censorship law; an appeal has been taken to the state high court. New York continues to view and censor all films proposed for exhibition.

ACLU action with respect to state legislation is represented by the arguments used by the Ohio Civil Liberties Union: 1—movies are subject to the general laws of obscenity, and violation can be punished, 2—films, as well as books, plays, paintings, etc., are objectionable to some persons and liked by others, and it is virtually impossible to arrive at determinations which do not involve religious, racial, political and aesthetic predilections, 3—since uncensored films may be shown on TV, the law is unfair to the theatre owners, and 4—"the power to censor is the power to regiment."

Massachusetts has for many years had on the books a "Sunday censorship" law which requires that pictures receive both state and local official approval as to their appropriateness for exhibition on that day. CLUM brought a test case and in 1955 the law was declared unconstitutional by the Massachusetts Supreme Judicial Court as a "prior restraint."

Seattle, Washington, has passed an ordinance making it illegal for the city's theatre operators to show films which have not been seen by the Seattle Board of Theatre Supervisors, and empowers that board to recommend that films not be shown, shown only to adults, or to be cut. New Haven, Connecticut, debated but did not enact a rule that films to be exhibited must have the seal of the Motion Picture Association, a purely private organization; the city's corporation counsel, after vigorous ACLU protest, advised that the ordinance would be unconstitutional.

Self-regulation appears sporadically. Chicago newspapers are carefully scrutinizing movie ads after some furor was caused by "French Line" advertisements. United Artists, producers of last year's controversial and unapproved "The Moon Is Blue," announced that all its

future productions would meet the requirements of the industry's (Hays' office) code.

Particular Films. The Chicago fight over the "Miracle" continues; the U.S. Supreme Court has refused to review the case on the jurisdictional ground that there was no final judgment by a lower court; the action now goes back to trial court in Illinois on the narrow question of actual obscenity as redefined by the Illinois Supreme Court. Clearcut victory for civil liberties was recorded in four cases where bans were lifted: "The Vanishing Prairie" in New York, "Bamboo Prison" in Memphis, "One Summer of Happiness" in Richmond, Calif., and "The Moon Is Blue" in Kansas (the state censorship losing out in the U.S. Supreme Court). In each instance there was active local opposition to censorship by the ACLU. Baltimore City Court, in reversing a ban on "The Game of Love," ordered by the state board of motion picture censors, concluded that "Although it may be fairly contended that the film is based upon a narrative of improper conduct, it does not constitute incitement to such conduct."

In Chicago, AFL motion picture projectionists refused to show "Salt of the Earth" because it was produced by the Mine and Mill Smelters' Union, once expelled from the CIO as Communist-dominated. When the distributors sought an injunction against the union, the Illinois ACLU intervened on the ground that refusal to show, coupled with the projectionists' monopoly position, amounted to absolute exclusion. The ACLU said: "This is censorship. The community can be deprived of its rights to judge the merits or demerits of any particular film." The injunction proceeding will take place in federal district court.

NYCLU protested a New York ban on "Mom and Dad" which showed a Caesarean birth. The case is before the N. Y. Appellate division of the state court.

An example of unauthorized police action was the attempt of the Cook County, Illinois, sheriff to prevent cars with juveniles entering drive-in theatres showing the "French Line." He threatened to search one theatre, and to arrest juveniles found necking—and the manager as well.

TV Films. Jack Gould, radio-TV editor of the *New York Times,* points out that the whole question of film censorship may take a new form because 80% of newly made films are now distributed over TV. Consequently, neither the Motion Picture Association, with its seal of approval, the National Legion of Decency (Catholic group), nor the existing state censorship boards touch four out of five films. There is no central reviewing agency in the television industry but there is of course a large element of program control exercised by sponsors. Gould points out the barriers to censorship: interference with interstate trans-

mission carried on under federal license, the likely need of an army of monitors, and the impromptu nature of many of the programs which are filmed.

4. Radio-TV

The radio and TV scene in the past year has been relatively free from specific advocacy or disapproval of censorship. It is evident that pressure in the direction of censorship is likely to develop if there is no noticeable diminution in the number and luridness of shows which offer violence and cruelty—particularly on children's programs. Awareness of public criticism probably led the television code review board of the National Association of Radio-TV Broadcasters to adopt a report to be submitted to the Senate Committee on juvenile delinquency. All subscribers to the code—both individual stations and networks—were reminded to take particular care in reviewing all programs designed for, or subject to, viewing by children. "Some errors of judgment have been made," the report said; "if this were not so, there would be no need for code or administrative board."

Blacklisting. Blacklisting, a continuing problem in the entertaining world, was the basis of a suit brought by 23 screen writers, actors, actresses and technicians who sued the major motion picture producers and distributors for $51,000,000 in damages. The plaintiffs contended that they had been blacklisted because they had invoked the Fifth Amendment before Congressional committees. California Superior Court Judge Ellsworth Meyer pointed out that, under the law of California, the use of the privilege against self-incrimination permits the drawing of an inference of guilt, even in criminal cases. He said that if a person could be convicted of a crime based upon an unfavorable inference, employers certainly did not have to employ such persons. He therefore ruled against the plaintiffs, holding that they had failed to show lack of justification on the part of the defendants concertedly to refuse to deal with them.

The Fund for the Republic announced early this year that it would sponsor an extensive survey "into political tests of any kind in hiring and firing practices in the motion picture, radio and TV industries." After the facts are gathered, conferences of all interested parties will be attempted so that various points of view will be fairly and honestly stated for a complete presentation of the whole issue. John Cogley, former executive editor of *Commonweal,* will head the study.

Politics and Libel. The ACLU has supported a bill by Senator John M. Butler (R., Md.), which would free radio and TV stations from liability for defamatory statements made during broadcasts by political speakers. It was pointed out that such legislation would relieve

stations of a censorship function, and place responsibility where it belongs, on the speaker.

Facts Forum. In July, 1955, the ACLU released a report which both supported and disagreed with charges made by radio-TV producer Hardy Burt that pressure had been exerted on stations and networks to drive programs sponsored by Facts Forum off the air.

The Union's executive director, Patrick Murphy Malin, made public a letter sent to Burt, who in November, 1954, had requested the ACLU to investigate his complaint of pressure group activity against the programs. Facts Forum is an organization that has been criticized as featuring a "right wing" bias and being dominated by a Texas oil millionaire, H. L. Hunt.

The Union agreed that Facts Forum's right of due process had been denied when it was not given an opportunity to answer derogatory statements made about it by Congressman Wayne L. Hays of Ohio during last year's special House Committee's investigation of tax-exempt organizations. However, the civil liberties group distinguished between the right to reply to attacks made during a Congressional investigation and attacks made in political speeches on the floor of Congress.

The Union also found that the National Issues Committee, now disbanded, in 1954 did pressure the Mutual Broadcasting System to eliminate the Facts Forum-sponsored "Reporters Roundup" by stating its intention to press for a FCC investigation of MBS's programming policy, but never doing so.

The Union's study did not find support for Burt's charge that the American Committee for Cultural Freedom pressured the National Broadcasting Company to drop a proposed Facts Forum nightly debate between a conservative and liberal commentator, or the charge that refusal of a spokesman for Americans for Democratic Action to participate in another Facts Forum program constituted "blacklisting." Cancellation of "Answers for Americans" by the American Broadcasting Company was a routine action taken with the advent of the summer season, and was not "out of harmony with civil liberties," the ACLU report said.

The ACLU report contained a statement from H. William Koster, manager of Station WEAN of Providence, R.I., owned by the Providence *Journal* Company, denying Burt's charge that when the station was purchased in 1954 by the Providence newspaper, conservative news commentators were dropped and liberal commentators retained and that the station was not presenting "views contrary to its own." Koster explained that when the *Journal* purchased WEAN, an affiliate of the Yankee network, it also operated Station WPJB, an ABC affiliate, and when the two stations were combined, some programs that competed with news commentators were the reasons for the changes, and that

one of the "conservative" commentators named by Burt, Fulton Lewis, Jr., is now being heard, while one of the "liberals," Quincy Howe, has never been carried on WEAN since the *Journal* purchased the station.

The ACLU report also discussed the complaints of Facts Forum's critics that its programs are biased, one-sided presentations of public issues, and that they occupy an ever-widening block of airtime which amounts to a monopoly. It declared that as a civil liberties organization it could not pass judgment on the content of individual programs, as its prime function was to guarantee that all points of view were heard. However, it said, since most Facts Forum programs are billed as pro and con discussions that would seem to imply a balanced presentation, the answer to whether or not they are biased can be determined only by a content analysis of the programs. "We believe that social science skills have been developed to the point where an unprejudiced, scientific content analysis of the Facts Forum programs can be made by an educational institution or foundation. . We suggest that because of its intrinsic value, the radio-TV networks, which have a real stake in this controversy, might consider the financing of such an independent study."

But a content analysis of Facts Forum programs would not answer the question of whether they monopolize the airwaves, the ACLU continued. This can be done, it said, only by reviewing the total programming of stations using the Facts Forum programs, to see if in addition to the Facts Forum shows, the audience is also being exposed to a diversity of opinions.

In the same vein, the ACLU argued that criticism of station and network agreements to have Facts Forum finance discussion programs, as an abdication of programming responsibility, was not a valid civil liberties issue. "Even assuming that programs are biased, the main civil liberties question is still whether the station that presents such programs counters this point of view with another program that gives the public access to different opinions. Again, we emphasize, the issue is whether the station practices balanced programming."

FREEDOM OF SPEECH AND MEETING

Free Speech for All. Thirty-five years of experience has taught the ACLU that the most difficult of its policies to explain to the public is the organization's position that free speech is *for everybody.* But that principle must stand if civil liberties are to have any meaning. The issue arose again early in 1955 when the House Un-American Activities Committee recommended prosecution under the Smith Act of the "neo-Fascist" National Renaissance Party—a group of about two dozen persons. Pointing to the Union's consistent opposition to the Smith

Act since its adoption in 1940, Patrick Murphy Malin, Executive Director of the ACLU, said in a letter to Rep. Francis E. Walter that while the Government has the right and duty to deal with subversive *acts,* the *expression* of any political philosophy—however heinous—is protected by the First Amendment. To those concerned lest the NRP's appeal to bias and prejudice impair efforts to develop racial and religious harmony, Malin said: "The advances being won daily on the race relations front are eloquent testimony to the success of speech promoting the idea of equality, and they prove that free debate and reason, which the First Amendment guarantees, can defend the values of democracy."

A similar plea to "advance the American tradition of free discussion and free assembly for everyone" was made by Ralph S. Brown, Yale University Law School professor and chairman of the ACLU's New Haven branch, when an organization known as the Connecticut Peace Council was denied a school-meeting place by the Bridgeport School Building Committee. New York Civil Liberties Union took legal action in support of the Yonkers Peace Committee which was denied a meeting place by the Board of Education in that New York community. The case was lost in the U.S. Supreme Court.

Words of Warning. In January, 1955, speakers at a convention of the American Psychological Association warned that anti-intellectualism is an actual threat at present to America's freedoms. Judge Learned Hand, in a speech later the same month, deplored the current constant recourse to the word *subversive* "as a touchstone of impermissible deviation from accepted canons." As a matter of fact, he said, "All discussions, all debate, all dissidence, tends to question, and, in consequence, to upset existing conviction: that is precisely its purpose and its justification." He also noted that societies which had not permitted unorthodox views eventually declined. A caution to socially conscious groups came in a report from the National Community Relations Advisory Council. Addressing itself specifically to Jewish communities, it warned them to "maintain and guard their traditional adherence to civil liberties . even if some immediate purpose of preventing anti-Semitic expressions may appear to be served by abridgment or infringement of these principles in some particular case."

Gerald L. K. Smith Again. Albert Levitt, a former U.S. district court judge, stated that Senator McCarthy is a member of subversive organizations. Smith said that Levitt lied. Levitt sued for libel and was awarded $750 in damages. Southern California ACLU filed an *amicus* brief in the Circuit Court of Appeals on the ground that "political controversy may properly inspire excitement; punishment, therefore, should be withheld in the absence of imminent and substantial evil; furthermore, Levitt had not shown that his reputation was imperilled."

Finally the ACLU objected to the refusal to admit the traditional libel defense of a showing of truth. The Court of Appeals in July, 1955, reversed the decision, noting that both McCarthy and Levitt are experienced political figures and therefore subject to attack in a political commentary.

Restriction of Political Freedom. Iowa has passed a law which could virtually outlaw minor parties, by requiring that such parties can gain a place on the ballot only if they hold a convention attended by 1% of all the state's voters. The Geerling bill, in Michigan, attempted the same result by calling for qualification based on a much larger number of votes cast in the previous election, but this was defeated. Both Iowa and Detroit ACLU affiliates were active in opposition.

Hatch Act Case. Curtis C. Wilson, a 29 years in service Post Office employee in Houston, wrote a letter to a newspaper calling Governor Shivers of Texas a "judas goat" for leaving the Democratic Party in 1952 to support General Eisenhower, and then returning to the Democratic fold. Wilson was charged under section 9 of the Hatch Act which forbids any federal worker to influence or interfere with an election or take an "active part in political management or in political campaigns." The Act provides, however, that government workers have the right "to express their opinions on all political subjects and candidates." On June 14, 1955, the Civil Service Commission announced that the offender was receiving the minimum penalty of 90 days' suspension because he had not known he was violating the law; it ruled that his letter was "his contribution to an organized campaign." Later the suspension was rescinded pending judicial proceedings to test the applicability of the law to Wilson's remark. ACLU filed a brief defending the employee's right to speak his mind.

White House Picketing. A bill designed to halt picketing in the vicinity of the White House, opposed by the ACLU, was shelved in the Senate. The House-approved measure was rejected by the Senate District of Columbia Committee after a strong attack by Senator Wayne Morse who held that it would undercut freedom of speech and assembly.

Lamont-Emspak-O'Connor Cases. These cases were discussed in last year's *Annual Report* in the section on legislative committees. The U.S. Supreme Court has ruled that Emspak adequately invoked the constitutional guarantee against self-incrimination, but neither in that case or in the others has a ruling been made on the fundamental free speech issue under the First Amendment. District Judge Edward Weinfeld in New York City dismissed the Lamont indictment as defective because it did not specifically allege the authority of an investigating

committee to conduct the inquiry, nor could the government supply any. This decision may have wide import; the government has announced it will appeal. The ACLU will continue vigorously to oppose conviction of Lamont and O'Connor for alleged contempt of Congress, holding that the questions asked (about Communist Party membership in O'Connor's case, and alleged Communist associations in Lamont's case) are either irrelevant to the Committee's mandate to investigate government efficiency and economy, or invade the First Amendment rights of the authors. The inquiry was into the overseas libraries in O'Connor's case and into the Army's use of Lamont's books. The ACLU argues that a book must be judged by its contents and not by its author's associations.

UMT. The ACLU has continued its opposition to legislation calling for universal military training. Military service, by its nature, calls for discipline and restriction upon the freedom of the individual. Such restriction may reasonably be elected by the professional soldier or voluntary enlistee but it is a somewhat different matter when the citizenry at large is involved. Patrick Murphy Malin, the Union's Executive Director, in a message to the House Armed Services Committee, has protested that UMT "would create a spirit of militarism hostile to democratic liberties . . . prepare the way psychologically for totalitarian practices, and become accepted as a regular feature of education, even in times of peace." Malin noted that the ACLU was not opposed to continuation of Selective Service, and recalled that the Union did not oppose the original draft law in 1940. In view of the current danger to national security, he said, "it lies beyond the competence of the ACLU in the name of freedom now to oppose measures for Selective Service, which in earlier emergencies it has accepted." But he urged that "everything possible be done to make it clear that conscription is an emergency measure, even if it should be made very comprehensive. Man's ability to abandon conscription will be a measure of his capacity to maintain both peace and freedom."

LOYALTY AND SECURITY: THE CHANGING TIDE

For the past six years global tension and concern about the internal security of the nation had led to an accumulation of protective laws and regulations which, admirable in their patriotic intent, have seriously eroded the American principle and practice of individual freedom by failing to provide for due process and by excesses. Suddenly, in the spring and summer of 1955, the current began to run the other way.

A general awakening of the public conscience to the harm done the constitutional rights of the people, the guidance of the federal courts, and the courage of a number of responsible legislators and government officials have thrown a clear light on the danger in which we stood. Within a few weeks the Congress voted funds to a standing committee on the Bill of Rights and authorized a national non-partisan commission to reconsider the security program; the Senate Internal Security subcommittee has stated that the Attorney General's list is being "widely misunderstood and misapplied" and such court decisions as those in the Lattimore and the Schactman passport cases have reaffirmed fundamental due process.

The civil liberties aspect of the security-loyalty problem remains critical, and libertarian concern and pressure should continue in full force. But now, at least, there are signs that the country may be turning from an unhealthy preoccupation with its fears to an intelligently practical use of its strengths.

1. The National Scene

Criticism of the Federal Security Program. In January of this year it was announced that a special committee to look into the federal loyalty-security program was being organized by the Association of the Bar of the City of New York under a $100,000 grant by the Fund for the Republic. The decision to undertake the study was prompted by conclusions reached in an earlier examination of the system by the American Assembly. In that group fifty-four leaders, drawn from all walks of life, found that current loyalty methods have caused unjustifiable hardship and a weakening of morale and efficiency among federal employees. They concluded too that Congress had encroached upon the President's responsibility for administration of the loyalty-security program and called for a new examination of the system, establishment of an appeals board, and uniform standards for determining risks.

This view was also set forth some months later in a series of notable speeches delivered by former Senator Harry P. Cain, a Washington State Republican, and now a member of the national Subversive Activities Control Board. Advocating that a thorough and immediate overhaul of the federal security system be entrusted, not to politicians, but to a bipartisan committee of private citizens, Cain drew up an impressive list of possible improvements. He gave particular attention to minimizing the financial and personal hardships of a suspended employee, and to increasing the protections of due process surrounding his efforts towards reinstatement. (See below, p. 72.)

On March 15, the ACLU, in the person of Ernest Angell, chairman of the Union's Board of Directors, presented to a subcommittee of the Senate Government Operations Committee the Union's views on the

controversial issue. Declaring that the federal security program has led the public to believe that "discharge as a security risk is tantamount to an official finding that the employee is virtually guilty of treason," Angell urged substitution of the standard, "unsuitable." "It would seem forlorn to hope," he continued, "that, in an area giving so much ammunition for political warfare, the public would be convinced that discharge as a security risk carries with it no stigma, especially when the 'numbers game' is played so as to give the impression that people who resign or are dismissed for non-security reasons are Communists. . . ." The ACLU spokesman gave full endorsement to the establishment of a special commission to study the whole program and also recommended the setting-up of security review boards composed of non-government employees, and an end to the general use of secret informants. He further pleaded for the right of identification, confrontation, and cross-examination of the adverse witnesses. Without these safeguards, Angell said, "many good persons who might help our national security will not even attempt to seek federal employment when they know they may be stigmatized as a security risk because of a statement by an anonymous informer who may be an anonymous liar." As before, the Union recognizes that there are serious objections to revealing the identity of a government counter-intelligence agent, but his testimony should at least be subject to examination by the reviewing board. (See below, p. 70.)

Security in Federal Employment; Ladejinsky Case. A study in confusion arose at the very beginning of this year in the case of Russian-born Wolf Ladejinsky, agricultural methods expert with many years of outstanding service in the State Department. When he was transferred to the Department of Agriculture in December, Ladejinsky was labelled a security risk by Secretary Benson without prior announcement to Ladejinsky himself. After a public outcry, embittered by some suspicion of anti-Semitism at work, Ladejinsky's State Department clearance was found acceptable to Harold Stassen who invited Ladejinsky to take on the job of organizing a land reform program in Vietnam under the sponsorship of the Foreign Operations Administration. Continued public displeasure at the picture of ludicrous contradiction between two federal departments led Secretary Benson in June to withdraw the adverse Agriculture verdict, but the reversal was not accomplished by a statement of regret to the individual concerned. Later in the year Benson took full personal responsibility for an admitted error.

Corsi Case. Another federal fracas involved the administrator of the special refugee immigration program, Edward Corsi. When Secretary of State Dulles personally announced Corsi's appointment, he called

him "my old friend" and the "best qualified man" to unsnarl and speed up this particular immigration procedure. Suddenly, Representative Walter of Pennsylvania, chairman of the House Un-American Activities Committee, unleashed charges that Corsi had past Communist and Communist-front associations; the State Department relieved Corsi of his assignment, stating that it had been planned only as a 90-day stint, which was news to Corsi. The Secretary failed to come to the defense of his old friend. Corsi refused both a new assignment and a hearing before the House Committee.

ACLU, in a letter to Secretary Dulles, strongly protested this un-American treatment of a responsible public figure on the basis of mere allegation.

Army, Navy, Air Force. In the fall of 1954 the Navy announced that it was holding up the commissions of three recent Annapolis graduates pending a security check. The commissions were soon granted but the ACLU pointed out that "failure to complete the security investigation before the graduation was not in accord with the concept of fair treatment and democratic procedure which are the core of our respect for due process." Conversely, the Union congratulated the Navy for its forthright candor in acknowledging its error in the handling of the Abraham Chasanow case. Chasanow, a civilian employee of the Navy Department, had been dismissed under the security program on charges—later proved false—that he associated with "subversive" organizations. "May we respectfully suggest," wrote ACLU's Executive Director, Patrick Murphy Malin, "that the original error in the Chasanow case, the acceptance of the charges of unidentified informants, could have been avoided if the principle of cross-examination had been followed at the hearing."

Recent reports disclose that of 36 Army civilians suspended at the Ft. Monmouth Signal Corps Center under the Federal security risk program, 17 have been reinstated after charges and hearings, 11 reinstated without charges, and 8 dismissed after charges and hearings. This appears to have settled all the cases that burst into national notice with the 1953 investigations of Senator Joseph McCarthy.

The National Association for the Advancement of Colored People has come to the defense of Theodore Griffin, president of its Asbury Park, N.J., local, who was suspended from his job as a civilian employee of the Air Force for alleged sympathetic association with Communists. NAACP contended that Griffin associated with but was on guard against alleged Communists in connection with his official duties as local chapter president. The organization called him a loyal American.

In June of 1954 an engineer for Republic Aviation in Farmingdale, New York, lost his job after seven years because the Air Force charged he suffered from psychoneurosis and was hence "too unstable for secret

work." Not until November was the situation straightened out. It seems that the psychoneurosis charge was the result of confusion over the meaning of the term "neurodermatitis," known to veterans of the fighting in Southeast Asia as "jungle rot"—an itch-producing skin disease he had contracted during his service in the Navy. The engineer has his job back, and also reports that he is no longer itchy.

"How to Spot a Communist." Following a widely-publicized protest by the ACLU, the Department of the Army has withdrawn a pamphlet, "How to Spot a Communist," used by its Ordnance Corps in Watertown, Massachusetts, and by the Continental Air Command. The Union criticized the document as a "serious threat to free thought and expression" because it asserted that the use of certain language and adherence to certain views and associations, by any individual, constituted "danger signals" pointing toward Communist belief.

Among the "clues" enumerated were use of words such as "vanguard," "chauvinism," "book-burning," "colonialism," "demagogy," "witch-hunt," "dialectical," "reactionary," "exploitation," "materialist," and "progressive." Also listed as "clues" were "specific issues [which] have been part of the Communist arsenal for a long period of time." Included in the list were "McCarthyism," "violation of civil rights," "racial or religious discrimination," "immigration laws," "anti-subversive legislation," "any legislation concerning labor unions," "the military budget," and "Peace."

Another ground for suspicion was to be found in support of some groups. "Generally speaking," the pamphlet asserted, "it is well to be wary of those organizations which stand for wholesale condemnation of the U.S. Government, a legitimate political party, or groups of individuals. Communist fronts have consistently shown preference for such issues as 'Civil Rights,' anti-subversive legislation and restrictions on immigration. In addition, these groups frequently seize on any controversial subject from fluoridation of drinking water to 'police brutality' in order to promote their nefarious schemes."

Other important loyalty security issues are discussed in the sections on this *Report* which deal with Academic Freedom (pages 41-4) and Due Process (page 50).

The Courts; Peters Case. ACLU filed a "chamber of horrors" friend of the court brief in the case of Dr. John P. Peters before the U.S. Supreme Court. Dr. Peters, the senior faculty member of the Yale University Medical School, had held an advisory appointment with the United States Public Health Service for many years. Shortly after the functions of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare in April of 1953, Dr. Peters received notification that there was reasonable doubt as to his

loyalty and that he was barred from government employment for a period of three years. Pointing out that the merits of the case were adequately dealt with by petitioner's attorneys, the ACLU brief set forth instance after instance where the testimony of secret informers had proved on examination to be ridiculous, or motivated by ignorance or spite; emphasis was placed on the injustices that occurred when hearing boards failed to provide for confrontation and cross-examination of adverse witnesses; the necessity of such star-court proceedings in any case involving government employees was sharply questioned, particularly in the case of an employee, such as Dr. Peters, who held a non-sensitive position. On June 6, 1955, the Court ruled 6-3 that the Loyalty Review Board had exceeded its authority in proceeding to conduct a review, on its own initiative, when there had been previous departmental clearance. The majority opinion declared that consideration of the constitutional questions involved had been unnecessary since the case could be decided on other grounds alone. Justice Douglas wrote a separate concurring opinion, rejecting the adverse opinion of a lower court, on constitutional grounds; Justice Black also pressed for determination of the constitutionality of the Executive Order under which security firings are made; Justice Reed, in a dissenting opinion, also believed that the constitutional issue should be faced. (See below, p. 72.)

Communism as Crime. Until 1954 all prosecutions of Communists under the Smith Act were for conspiring to advocate the overthrow of the government by force and violence. Now, under another section of the Smith Act, Claude Lightfoot and Junius Scales have been adjudged criminal by virtue of membership in the Communist Party, together with knowledge of the Party's alleged advocacy and intent to bring about the overthrow of the government as speedily as circumstances would permit.

The United States did not charge Lightfoot, an admitted party official, with any overt act, or any part in a criminal conspiracy, or even any preparation for or personal expression of belief in the violent overthrow of government. Rather, he was charged with the crime of being a member of an organization which advocates or teaches violent overthrow. The evidence presented by the prosecution was to the effect that Lightfoot as a party member read and disseminated information from certain books which in the opinion of the government witnesses espoused the revolutionary Marxist-Lenin theory; this theory, in the further opinion of the witnesses, by necessity is further equated with force and violence.

The American Civil Liberties Union believes that all guilt is personal and that the rights of individuals to freedom of belief, speech, inquiry, and assembly cannot constitutionally be restricted or punished

unless there is a clear and present danger threatening society. In this prosecution the Union sees punishment imposed upon freedom of association only because the group involved espouses views which the great majority in society reject and detest. The Illinois Division of the ACLU will therefore in the Lightfoot case seek to file a friend of the court brief on the defendant's appeal; if new points appear in the Scales case, in North Carolina, similar action will be taken by the national office.

Smith Act Conspiracy Convictions. Small groups of Communist leaders and officials continue to be prosecuted with almost universal success in conviction; there have been court proceedings in California, Colorado, Connecticut, New York, Ohio, Pennsylvania, and Washington, some representing trial court action and others appellate judgment. In several of these cases the ACLU and its affiliates have intervened on the bail issue or where reappraisal of the Smith Act could be hoped for. The Dennis case (the basic 6-3 decision of the U.S. Supreme Court on the Smith Act) continues to control the constitutional interpretation. Nevertheless, important dissents continue to be written. Thus Judge William L. Hastie of the Third Circuit Court of Appeals, in the Nelson case, said that if the Communist Party's "present tactic is a waiting game, characterized by the teaching of revolutionary theory while incitation to action is left for the indefinite future, the First Amendment prevents the Government from proscribing their teaching. . Our lawful recourse during such a period lies in the field of education and demonstration, which will increase devotion to our democratic institutions and thus frustrate Communist preachments. . . . There is some risk in such a course. But the adoption of the First Amendment has committed us to it."

The ACLU continues to believe that the Smith Act is unconstitutional; consequently, where a prosecution appears likely to yield fruitful exploration of the basis constitutional question, the Union has intervened. In California, the Northern California affiliate and the national office filed a joint brief, and the Southern California ACLU a separate brief, in the U.S. Court of Appeals (Yates-Schneiderman case). Colorado ACLU interested itself in a bail issue. Ohio and Pennsylvania affiliates were active in seeing to it that defendants were provided with competent counsel.

Recent California convictions have been accepted for review by the Supreme Court. The ACLU and its California affiliates will present briefs in these cases.

Internal Security Act of 1950. Title I of this Act establishes the Subversive Activities Control Board and late last year the Communist Party of the United States challenged the Board's order that the party

must register as a Communist action organization. The United States Court of Appeals for the District of Columbia handed down a decision on December 23 confirming the Board's order. In a 2-1 decision, the court ruled that the Communist Party, as proved by government witnesses and documentary evidence, had, as one of its goals the overthrow of the government of the United States, and since, "The right of free expression ceases where it leads to harm to the Government" the Board had the right to demand registration as a means of national protection. The case will go to the U.S. Supreme Court on appeal. The Board has later ruled that the Labor Youth League and the Jefferson School are Communist-front organizations. The ACLU has intervened on the issue of the party's being required to register, on the ground that some of the party's activities are legitimate and may not be circumscribed.

Communist Control Act of 1954. Testing of the constitutionality of this law has hardly begun. Bert Salwen, Communist candidate for county freeholder in Trenton, N.J., was removed from the ballot under this law; an intervening brief was filed by the ACLU; the decision went against Salwen who will apparently not appeal. Another 1954 law, requiring registration of communist printing presses will be vigorously opposed by the ACLU if enforcement is attempted.

The ACLU and Communism. In all of its activity in cases involving the Communist Party and its members the ACLU has recognized the dual nature of the Communist movement—part international conspiracy and part lawful political action. ACLU intervention has always related solely to equal protection of the law and due process for everyone—even Communists. This program is in no way inconsistent with the Union's organizational rejection of Communists by its denying them any place on its governing board, committees or staff.

Radio Ban. A bill was introduced in Congress to deny radio and TV time to Communists and Communist front organizations for political speeches. Such a law would amend the Communications Act which now requires equal opportunity for all candidates for office. The ban would apply to persons convicted of treason, subversive activities, etc., and to members of any group found to be Communist dominated or infiltrated. The bill, approved by the ACLU, has not been acted on.

Gwinn Amendment; Public Housing Loyalty Oaths. In 1952 Congress passed the Gwinn amendment requiring tenants in public housing projects to take a loyalty oath and particularly to disclaim membership in any organization listed by the Attorney General. Several ACLU briefs filed by the affiliates and the national office throughout the country have contended that this law lays down a rule of "conclusive guilt established by mere association, without even the requirement that the

member of the organization have knowledge of the alleged subversive purpose of the organization," and raised familiar objections to the use made of the list itself.

The Union position has been upheld in a variety of ways by a number of local courts. Municipal Court Judge Leo G. Marcallo supported ACLU of Northern California in its contention that tenants who refused to sign could not be evicted; Illinois and Wisconsin ACLU affiliates have had similar successes in their state supreme courts, but tenants in New York City are currently being required to fill out loyalty certificates. In the Rudder case (Washington, D.C.), a federal district court held that the U.S. government acting as a landlord was subject to "due process" and could not evict tenants unless they were proved to be members of organizations proved to be subversive. It seems clear that this issue will have to be resolved by the U.S. Supreme Court, although it is too early to determine exactly how the constitutional issue will be confronted. The issue reached the U.S. Supreme Court in the Wisconsin case; review was denied without opinion which leaves the Wisconsin ruling against the Gwinn Amendment in force, but does not indicate the high court's opinion on the matter.

Security and Defense Industry. If security in the federal departments presents a complicated and confusing picture, it is not difficult to imagine the scene in defense industry where there are thousands of employers and where the existing regulations cover only the simplest aspects of the problem.

There seems to be general agreement that security measures are necessary in the classified activity divisions of private industries contracted to do government defense work. Two problems involving civil liberties have emerged: the administration of these measures and the extent of their application. Both are found potentially in the General Electric employee security program criticized roundly by ACLU last summer. In a letter to William J. Barron, labor relations counsel for the company, ACLU acknowledged that there is a need to maintain security in sensitive positions in the industrial field. But, said the Union, ". . . whatever security program is applied should not be administered by private firms. Government security authorities have never given any indication that they wish to abdicate their responsibility for security to private industry—in fact the Federal Bureau of Investigation has on several occasions indicated that private programs should not be set up." ACLU argued that the GE private program would not serve national security in that ". . . any . . . applicant . . . bent on espionage or sabotage would not hesitate to sign the pre-employment statement." The ACLU letter also emphasized that private companies do not have access to the files of government investigative agencies, and asked "what basis is there for proving charges against an applicant. Without having proper in-

formation, it is easy to see how great harm might be done through inaccurate decisions." Since the GE program applies to applicants who will work on non-secret as well as classified material, ACLU said that the refusal of government agencies to clear workers for work on classified matter should not necessarily deny employment to persons who could work on non-secret information. Finally, the ACLU letter warned that " . . applicants, recognizing the emphasis on security, will so carefully watch what they say and with whom they associate as to add to the already heavy pressure placed on the traditional American principles of freedom of speech and association."

In the meantime the government is supporting the Reed bill which would require security checks on all persons having access to any plant where defense work is carried on; the bill is so broadly drawn that it might require checks even on men delivering bottled cola to an office area where the most ordinary non-classified work was done. In July, 1955, this bill was rejected by the full House Judiciary Committee; instead, the Committee indicated approval of a commission to study security in industry.

The Department of Justice has also announced a major program designed to restrict the representational power of unions which it considers to be Communist-infiltrated; if successful, these unions would be put out of business, thereby raising further serious civil liberties issues.

Lattimore Case. See below, under Procedure in the Courts (p. 62).

2. State and Local Action

Steve Nelson Case. Lawyers are generally agreed that the constitutionality of state laws against subversion, outlawing the Communist Party, etc., will be materially determined by the outcome of this case. Steve Nelson, a Pennsylvania CP official, has been convicted under the Smith Act conspiracy section, and the federal district court verdict has been upheld by the U.S. Circuit Court of Appeals. In addition he has been convicted under Pennsylvania law on a charge of sedition. With respect to the state conviction, the Union has entered the case contending that federal law in the field of subversive activity has preempted the field and that the states cannot legislate on national security; the Pennsylvania Supreme Court has upheld the ACLU position, but an appeal has been taken to the U.S. Supreme Court. Attorney General Brownell has expressed his approval of state laws governing subversion.

State Legislation. Divergent trends have appeared in the state legislatures. Massachusetts passed a 1955 law "to provide more true Americanism in the Commonwealth by requiring the hand salute to the American flag with the singing of the national anthem." New

Hampshire has extended for another two years the authority of the state Attorney General to inquire into subversion, although since 1953 he has uncovered only 10 pro-communists in that state, and these active only in advocacy. The ACLU criticism of the program says, "To uncover a handful of Communists, the Attorney General has cast a pall over freedom of speech and freedom of association in New Hampshire. Can there be any doubt but that people in this state will now fear to join even legitimate organizations lest their membership will sometime later be considered evidence of subversion if the Attorney General *later* decides the group has become subversive."

New Haven and Hartford affiliates of the ACLU successfully opposed a series of Connecticut bills in the loyalty-security area: one which provided instant dismissal for any state employee invoking the Fifth Amendment in the course of an investigation into subversion; one setting up a loyalty commission with exceeding broad powers; another virtually outlawing the Communist Party; and finally, one requiring loyalty clearance for counsellors employed at summer camps. In Maine, a proposal to outlaw the Communist Party was reported unfavorably, 9-1, by the Senate Judiciary Committee, and a teacher loyalty oath bill was withdrawn by its sponsors. The ACLU publicly opposed both bills.

In Illinois, one of the perennial Broyles bills suffered another veto; a second, which is now law, was made less obnoxious but still constitutes a serious threat to civil liberties by its requirement that all public employees take a test oath, and by a provision making it a felony to be a member of a subversive organization, in effect of any of the 300 organizations on the Attorney General's list.

Wisconsin and Florida killed bills dealing with subversives. The Wisconsin Senate Judiciary Committee voted 5-0 against a bill which would have provided up to 20-year prison terms and fines of $25,000 for public employees convicted of subversive activities, and required written statements of non-subversiveness from candidates for office and all present and future public employees. The ACLU spokesman, in opposing the loyalty oath provisions of the bill, said it would tend "to discredit the public service—not to raise its efficiency; to make it more difficult to get and to hold competent employees; to defame the administration of the state." In Florida, defeat in committee met a bill giving the state attorney general extraordinary investigative powers, and denying witnesses the right to plead self-incrimination.

At the same time, anti-subversion bills were introduced into the Assembly, at the request of the American Legion. One bill, voted down 8-1 by the Committee on the Judiciary, would have created a permanent state committee to investigate subversion in the state. Membership would have been limited to assemblymen who had served with the Armed Forces during a period of armed conflict and who belonged to

a veteran's organization authorized by Congress. The bill would have authorized the committee to coordinate information on subversion in Wisconsin secured from national investigation agencies, investigate Communism and Communist front activities among state employees and subversive teaching and "establish a positive program of Americanism for Wisconsin."

A second bill denied the use of the facilities of state institutions to "any person or group presenting doctrines contrary to the American way of life, or by individuals with a record of continued support of organizations cited as subversive by committees of Congress or the Attorney General." The bill provided that violation would subject the offending institution to curtailment of state funds. The bill was killed in committee.

California seems to have sharply reversed the trend of the past eight years. A May 9, 1955, editorial in the San Francisco *Chronicle* explores the phenomenon: "How to account for the noticeable and gratifying turnabout from the hysterical frenzies of the 1947, '49, '51 and '53 [legislative] sessions we do not know for certain. . . . Something, possibly the voice of conscience, has convinced the majority of the legislators that there is neither justice, good sense nor, in the long run, votes to be won by recklessly tossing some of our most precious rights onto the bonfires of extremism." The newspaper then summarizes: 1—some hope for repeal of the loyalty oath required of churches seeking tax exemption, 2—dismal failure of bills requiring loyalty oaths of all persons licensed by the state in their callings, 3—even a watered-down school book censorship bill failed, 4—positive action banning political gags on teachers (as well as other good civil liberties action outside the field of loyalty and security).

State and Local Cases: California. California, however, still has the problem of working out its inheritance of security and loyalty legislation. In the Cutter Laboratories case, the state supreme court held 4-3 that a Communist could be discharged by the manufacturer of pharmaceuticals and biologicals for civilian and military use, even though the federal government does not require the company's workers to have security clearance. Southern California ACLU has filed a brief opposing Cutter's position. The case concerns the San Francisco concern which fired Mrs. Doris Walker, purportedly after it found her to be a Communist Party member, a charge she refused to deny. The decision is important because it could lead not only to the invalidating of employment contracts with Communists working in defense plants who have no access to secret data, but also to the general right of a Communist to any kind of job. The dissenting judges pointed out that under the decision a Communist who makes a contract can violate it with impunity. The case has been appealed to the U.S. Supreme Court.

Also in California, under existing law, the church-loyalty oath has been declared unconstitutional as invading free speech in one case, and as unconstitutionally discriminatory in another—but by lower courts whose rulings may affect only one county. A similar requirement of veterans awaits testing by the top court. Four employees of Pacific Gas and Electric failed in a suit for damages brought against the state Un-American Activities Committee which had recommended dismissal by their non-governmental employer.

Massachusetts Cases. Civil Liberties Union of Massachusetts has filed an *amicus* brief in the case of Otis A. Hood, indicted for contributing money to and being a member of the Communist Party, "knowing it to be a subversive organization." This case is like that of Steve Nelson in that it raises the question of federal pre-emption of the security field. In a subordinate aspect of the Hood case, the defendant's library was finally returned to him when Roxbury District Court Judge Edward O. Gourdin ruled the police seizure illegal.

Dirk J. Struik, M.I.T. professor indicted under the Massachusetts anarchy law of 1919, continues suspended with pay, since 1951, his case apparently awaiting decision in the Hood matter.

The Commission on subversion created by last year's legislature has published full biographies of 80 persons about whom it believes it has "creditable" [sic] evidence of subversive activity or association. One of the persons named has already begun an action demanding withdrawal and expunging of the list on several grounds; among the reasons advanced in the complaint is that the legislature through its Commission has made a finding that this person is declared to be a Communist, that Communist party membership is a felony under Massachusetts law, and that the legislative action is therefore one of attainder. CLUM will file an *amicus* brief on the constitutional issue.

Pennsylvania. Philadelphia ACLU has continued its fight in the past year against the state's Pechan Act which required signing of a loyalty oath or other basis for loyalty certification of all employees of the state or of state-aided institutions. The Act has been misused in action against teachers and others whose continued employment in no way contravenes the provision of the Act. According to ACLU's Philadelphia branch, "To date, so far as we know, the loyalty oath provision of the Act has resulted only in the dismissal of eight state employees with conscientious scruples against taking the oath and against whom not the slightest suspicion has been breathed. Other provisions of the Act seem to have been equally ineffective."

The Braden Case. Carl Braden, copy reader for the Louisville *Courier-Journal,* bought a home in an all-white neighborhood and then

transferred it to a Negro business man. There was an explosion which damaged the structure. Braden, his wife, and four other persons were indicted under a Kentucky general sedition law. Carl Braden and seven others were also indicted under a law which punishes the advocacy of violent acts to bring about governmental change. Only the former charge has been tried; only Braden has been tried, and he received a fifteen-year sentence. The conviction was appealed to the Kentucky Supreme Court. The ACLU entered the case, furnishing Braden with co-counsel, because of the large number of important civil liberties issues; 1—the State's use as evidence of material seized on a warrant based on an affidavit by Braden's foster-daughter, a practice, said the Union, reminiscent of those "used by totalitarian Communist regimes in getting children to inform on their parents," 2—the vagueness of the indictment which charged commission of crimes without specification of their nature, time, or place, 3—the mere possession of Communist literature with intent to distribute—which would mean that every public library in the country could be prosecuted, 4—penalty for mere *suggestion* of the use of unlawful means to obtain a political end, 5—denial to defense counsel of the right to examine the documents on which the testimony of an FBI witness was based, 6—state legislation in the field of national security which the federal government has reserved to itself. The ACLU took no position on the factual questions of Braden's Communist Party membership, his distribution of literature, or the authorship of the bombing.

After conviction, the court set bail at $40,000; an appeal to the highest court in Kentucky for reduction in bail was turned down, and the ACLU began an appeal to the U.S. Supreme Court on this issue but bail was raised. Also after conviction, the trial court ruled that Braden would have to pay the cost of preparing the appeal record, although this is beyond his means; the Kentucky Court of Appeals reversed this order, but the court stenographer thereupon resigned (because under Kentucky law he would have to take his chances at collecting from the defendant), and the whole trial business of the court in which Braden was convicted was brought to a standstill.

The ACLU announced to its members that it would serve as a collecting agency to receive contributions for the fees of the attorney it supplied.

Local Loyalty Action. In Newark, New Jersey, the ACLU protested the suspension of three teachers for no other reason than their having invoked the Fifth Amendment before the House Un-American Activities Committee; the men were soon discharged. The Union will file a friend of the court brief with the New Jersey State Commissioner of Education before whom the case is now pending. At the same time the Union protested the distribution of a loyalty questionnaire to all

city employees as an aftermath of the House committee's probe; such oaths, the ACLU said, violate freedom of speech and association and are ineffective as a means of dealing with subversion.

The New York Civil Liberties Union has filed a friend of the court brief in the case of a New York City Department of Hospitals psychologist who admitted freely to Communist Party membership as a student in 1945-46, five years before her employment in New York. The city civil service commission marked her ineligible. The NYCLU brief stated "In our democratic society we cannot hold to the view that a former but terminated membership in the Communist Party constitutes any kind of proof whatsoever in support of the Commission's denying the petitioner her right to employment. . . . Petitioner has never denied her past; she merely wants to live it down."

Less formally, the Larchmont Community Chest "acquitted" Professor Goodwin Watson of Columbia of charges of pro-Communist affiliation brought by the Westchester County American Legion. Dr. Watson was serving as a part-time consultant to a local guidance center. The Chest report noted, however, that uncritical association with superficially laudable causes had been largely responsible for the criticism made by the Legion.

3. National and Local Interaction

The practice of making confidential FBI file information available to state governors for security investigations of state and municipal employees appears seriously to threaten civil liberties because there is no requirement that due process will be observed when state officials use this data. The Union has made public a letter sent in June, 1955, to the 48 state governors urging them to provide "full due process" when the file information is used. Such rights as notification to individuals of the charges, sufficient time to prepare a defense, a hearing at which the right to counsel, to confront and cross-examine accusers and present witnesses will be granted, and a reasoned, written statement of the findings were emphasized. The letter was signed by Ernest Angell, chairman of the ACLU Board of Directors, Judge J. Waties Waring, chairman of the Union's Due Process-Equality Committee, and Patrick Murphy Malin, executive director.

The letter asserted that the FBI-governors' arrangement grew out of a discussion at The Governors Conference several years ago of the problems facing state administrations who feared that security risks might be working in sensitive positions. Calling attention to a recent series of articles, entitled "Faceless Informers," in the Denver *Post*, the ACLU letter said: "These stories reveal that the file information has been used by local school authorities in efforts to oust school teachers, without granting the teachers a hearing which would provide an oppor-

tunity to answer the raw, unevaluated charges in the FBI file. The absence of a hearing is a violation of due process of law."

RIGHT TO A LICENSE

The prevalent concern with loyalty has, during the past twelve months, been focussed on persons who must have a license to practice their profession or trade. Such individuals are in a particularly vulnerable position; a single and simple adverse decision on the "loyalty" issue can perhaps destroy the whole pattern of their careers and personal lives.

General Legislation. ACLU in Northern and Southern California led in a successful fight against the Chapel bill which would have provided for license revocation of any licensee who exercised the privilege against self-incrimination when questioned officially on any subject (later restricted to questioning about Communism and advocacy of violent revolution). The Union's attack was based on constitutional grounds, holding that such a law would have deprived licensees of their right to earn a living, and that it was discriminatory because it singled out for penalty the 450,000 persons licensed under the California Business and Profession's Code. The Assembly Judiciary Committee tabled the bill by a 13-3 vote and it died in the Senate.

In New York the ACLU asked, and was granted opportunity, to testify before a state legislative committee considering a law which would authorize enjoining an organization and its officers from raising funds for any purpose upon proof that in the past funds raised had been secretly diverted to purposes different from those announced. The Union recognized the commendable intent to protect the public from fraud but suggested that other remedies be found, because a past diversion of funds should not lead to a conclusive presumption that all further efforts would be fraudulent. Since many organizations and persons in fund raising deal with public issues there would also be a restriction upon free speech; and since fund raising may relate to a criminal court proceeding, an injunctive prescription might interfere with some person's right to defend himself as best he can.

Lawyers. The Committee on Rules of Professional Conduct of the California State Bar recommended in 1955 that: 1—lawyers invoking the Fifth Amendment when questioned about membership in subversive organizations or advocacy of violent overthrow should be disbarred, 2—attorneys should be disbarred or suspended for "acting disrespectfully toward Congressional or legislative committees," and 3—similar action should be taken against those who advocate or teach

the violent overthrow of government. The State Bar rejected the first two recommendations but asked the legislature to act favorably on the third. Southern California ACLU opposed all three recommendations on the grounds that such penalties would drive lawyers toward orthodoxy on social and economic matters, that the political views of an attorney in no way affect his fitness to represent or advise a client, and that the removal of a Communist from the practice of law has no relation to national security. The Washington State Bar Association, while not advocating automatic disbarment on the Fifth Amendment issue, recommended that action should be taken to "investigate" and that "unjustified refusal" to answer should be made a specific ground for disbarment.

Lawyers: Specific Cases. In the case of George Anastaplo, mentioned in last year's *Report,* the United States Supreme Court declined to review a decision of the Illinois Supreme Court denying him admission to the bar in Illinois since he refused to answer the State's Character Committee's questions as to whether he was a member of the Communist Party. The Illinois Court had unanimously held that the right to practice law is a privilege, and that loyalty to the constitutions of the state and federal government can be required of an applicant for admission to the bar. Membership in an organization advocating violent overthrow of the government, said the Court, would give rise to questions concerning the sincerity of the applicant's oath to support and defend the Constitution. The right of free speech was not violated, the opinion continued, since there is a clear and present danger from the Communist Party, and the public must be protected against the evil, even if constitutional rights are infringed.

In the Ben G. Levy case the U.S. District Court for Southern Texas refused to admit a Houston attorney to practice before it, and was upheld by the U.S. Court of Appeals. It was charged that Levy had once held a $25-a-week job in the office of a lawyer rumored to be a Communist; he was also quizzed about his religious beliefs, his reading habits, whom he voted for in 1948, and his membership in fraternal and other organizations. The ACLU objected to these grounds for decision and this type of questioning as clearly violative of the attorney's right to due process and to freedom of speech and association; it was also pointed out that there was no charge that Levy was a Communist, and that he had been admitted to practice before the Supreme Court of Texas and all the lower courts. The U.S. Supreme Court reversed, directing Levy's admission and holding that the case disclosed "no sufficient grounds" for denial of the petition to practice.

Southern California ACLU, in the Edith Brooks case, has filed a friend of the court brief in the California Supreme Court contending that inquiry into political associations is irrelevant in determining the

morals or competence of an applicant for admission to the bar. ACLU also challenged the requirement of "good moral conduct" as one which required conformity.

Sheiner Case. Leo Sheiner, a Florida attorney, invoked the Fifth Amendment in 1954 when called to testify before the Senate Internal Security subcommittee; when disbarment proceedings were brought against him in a state court, because of his refusal, he again raised the privilege. The court ordered him disbarred.

ACLU Executive Director Patrick Murphy Malin, in comment on the case, said that no lawyer should be asked whether he was a Communist until there was competent evidence before the court to that effect, and that no adverse inference can properly be drawn from the exercise of the privilege against self-incrimination. Furthermore, even if membership in the Communist Party was shown, this should not be the reason for disbarment unless it was proved that such membership had resulted in the lawyer's performing acts inconsistent with his professional duties. The Florida Supreme Court voided the disbarment proceeding, although it noted that membership in the Communist Party, if established, would be a crime under both federal and state law.

Past "Rightist" Associations. Northern California ACLU was successful in its efforts to secure federal employment eligibility under civil service for a former falangist. The man, a member of the Spanish Falange from the age of 10 to 13, had served in the U.S. Marine Corps where he had access to atomic war materials, was honorably discharged and given Coast Guard Security clearance. Similarly, the New York Civil Liberties Union defended the right of Dr. Godfrey E. Arnold to be admitted to the New York County Medical Society. NYCLU pointed out that his alleged past associations in the Nazi Party should not be criteria for medical society membership. The State Medical Society, on appeal, ordered Dr. Arnold admitted.

Radio Operators. The ACLU in the spring of 1955 testified before the Federal Communications Commission, opposing a requirement that commercial and amateur radio operator licensees take a loyalty oath. The Union pointed out that any person who could construct a radio set might threaten security, license or no license, and existing installations could be seized by violence. The safeguard to security in the loyalty oath is slight, and the invasion of freedom is major.

Piano Tuners, Liquor Dealers, Wrestlers and Boxers. A music teacher was forced to resign from a junior high school job when identified as a Communist by a witness testifying before the House Un-American Activities Committee. He turned to piano tuning but was

denied a Washington, D.C., license on the ground that he was "under Communist discipline." A trial examiner for the District Board of Review and Appeals has recommended that the denial be reversed. The Wisconsin legislature contemplated loyalty oath screening for liquor dealers, and in Indiana professional wrestlers and boxers must now take a loyalty oath before appearing in that state.

ACADEMIC FREEDOM

During the past year the chief threats to academic freedom and to the freedom of individual teachers have again continued to derive from the attitude of society to Communists, past Communists and suspects. Some clarification has been achieved, particularly through Dean Erwin N. Griswold's widely-read classic review of the meaning of the Fifth Amendment which authoritatively disposed of the superstition that a pleading of the privilege against self-incrimination must yield an inference of guilt. There have also been Supreme Court decisions to the same effect. But a nervous society still continues frequently to impose the penalty of discharge even upon teachers who merely draw the line at revealing the names of old associates. "Informing" has frequently become the test of "sincerity."

Climate of Opinion. Nine hundred Houston school employees, in a special survey conducted by the National Education Association, reported that they have been subjected "to unwarranted pressures" in political, social and classroom activities, and there was prevailing uneasiness. In Rhode Island, some high school students refused to answer a questionnaire on Universal Military Training on the ground that their answers might be held against them in future years.

Harvard Crimson. A comprehensive student survey of academic freedom has been offered each year since 1948 by the Harvard undergraduate newspaper. It is significant that this year's editorial, "Duty and Liberty," probes deep into the problem of informing. The editors describe the range from traditional American repugnance to telling on a fellow-student cheater to the general willingness of everyone to inform the police about the identity of a thief; and they feel that "tattling" on former Communist associates has now come closer to the latter situation. "Approximately as in criminal offenses, the considered opinion of a fair, objective, authorized jury must take place over individual judgments and compunctions about informing."

The Reece Committee. This House committee released an extraordinary preliminary report by its staff, and conducted irresponsible hearings which all added up to a charge that a gigantic conspiracy



Herblock in the Washington Post Times Herald

"YOU GOT ALL THEIR NAMES?"

against the American way of life had in large part been sponsored by the chief educational and research foundations. When the time came for the foundation representatives to take the stand in rebuttal, the first of them was abruptly cut off and the hearings terminated. The whole nature of the proceedings were so alien to the proper spirit of Congressional inquiry that the ACLU Executive Director, Patrick Murphy Malin, wrote in protest to the majority and minority leaders of the 84th Congress. Malin denounced the report as "conceived and nurtured in ignorance, bias and malevolence," and said that the work of the Committee "seriously infringed upon the right of American intellectual leadership to that freedom of belief and expression which is a vital element in research."

Oppenheimer Case: Academic Freedom Phase. An invitation to Professor J. Robert Oppenheimer by the University of Washington Department of Physics to deliver a series of scholarly lectures was vetoed by President Henry Schmitz as "not in the best interests of the University." There were immediate local and national repercussions. The Regents, and the former and present deans of the Washington law school supported Schmitz but the great majority of the faculty and the student body viewed the veto as a breach of academic freedom. Thirteen nationally famous scholars refused to give special lectures or to attend scientific conferences scheduled at Washington University; one group of eight scholars voiced the opinion that the president's overruling of his faculty had "clearly placed the University of Washington outside the community of scholars." Schmitz's reply said that the decision was based on consideration of Oppenheimer's personal as well as his professional qualifications. The conferences were called off. Shortly thereafter Oppenheimer was unanimously reelected head of the Institute for Advanced Study at Princeton, delivered an address at the closing exercises of the Columbia Bicentennial and lectured at three Oregon state institutions. Although Oppenheimer did not speak at Washington the aftermath indicates that the university administration is not likely again to veto a faculty recommendation of this type.

College Debates. The scheduled nation-wide intercollegiate debates for 1955 had as their subject the recognition of Communist China by the U.S., but West Point and Annapolis cadets and midshipmen were ordered not to participate. The ACLU addressed a letter to President Eisenhower pointing out that a debate was an exercise in discussion and offered no inference as to the personal views of the speakers, and also suggested that free debate was basic in the democratic process. The President, in a press conference, gave his personal opinion that the academy students could properly take part, but he did not overrule the

authorities and they did not modify their stand. The debates took place with the two academies and a few other institutions, chiefly denominational, not participating.

ROTC Loyalty Oath. A notable victory was achieved by the ACLU in the matter of the ROTC loyalty oath. All college students enrolled in ROTC were required by the Defense Department to take a special loyalty oath (as distinguished from the oath of allegiance), and to certify to non-membership in the organizations on the Attorney General's list. Since college students at most land grant institutions are required to take two years of ROTC the oath was compulsory for them. ACLU, showing that there was no security question involved, pointed out that the student would be forced to "choose his associations, the speakers he wishes to listen to, the literature he wishes to distribute, at the penalty of being expelled from the university if his choices do not meet with the approval of the Defense Department." A few weeks later the Department rescinded the oath for students in the first and second year of ROTC (the compulsory period) and substituted a simple oath of allegiance—the basic positive loyalty oath in general use, to which the ACLU has never objected.

Academic Due Process. Widespread protest by the ACLU Colorado affiliate, and other organizations, has thus far been unsuccessful in obtaining a disclosure of charges and full hearing for a group of Colorado teachers. They were summarily relieved of their jobs by school authorities on the basis of "official" but undisclosed information received by Governor Thornton from an unnamed source. The State Board of Education has taken the position that the teachers may have a hearing but that it can see no value in such a proceeding until the governor sees fit to document his position.

A similar lack of due process prevailed in New York City in the case of Evelyn Katzowitz until NYCLU and the New York Teachers Guild appealed to State Commissioner of Education Wilson. The city's Board of Examiners attempted to use secret, unproved charges made by unidentified persons as a justification for denying Miss Katzowitz a permanent teaching license. The Commissioner disapproved the action of the Examiners in denying a permanent license solely on the basis of secret charges, the facts and details of which were not made known to the teacher and which she was not given an opportunity to explain.

NYCLU is involved also in the case of Professor Harry Slochower who was dismissed from his post at Brooklyn College after 27 years of tenure in the New York school system. He was fired after he relied on the Fifth Amendment privilege in refusing to tell a Senate Judiciary Subcommittee whether he had been a member of the Communist Party in 1940 and 1941. The U.S. Supreme Court has granted an appeal and

will hear arguments concerning the constitutionality of Section 903 of the New York City Charter which provides for automatic dismissal of any teacher who refuses to answer investigating committee questions; argued too will be the power of the Senate subcommittee to ask the type of question that led to Mr. Slochower's dismissal. NYCLU has filed a friend of the court brief.

University of California. An extremely complicated situation at the University of California has its roots in testimony before the Jenner Committee in 1953 to the effect that 100 college teachers in California had been forced out or excluded from teaching positions by a kind of exchange system covering information about persons of suspect loyalty. A University security officer for a time seems to have handled both his legitimate business (government classified work contracts) and the interest of the state Un-American Activities Committee. Persistent inquiry by Northern California ACLU and the university academic freedom committee has cleared up or corrected numerous points, but two matters are still in need of correction: 1—an academic security system subject to abuse because of too great reliance upon the discretion of its administrators, and 2—a general problem for the whole country, government contracts for classified work which permit government inquiry about any and all the employees of an institution—even those totally divorced from defense activities. Both the affiliate and the national ACLU will press for correction.

Furry, Kamin and Singer Cases. Wendel H. Furry and Leon J. Kamin at Harvard, at the request of the university, abandoned their refusal to testify before the Senate Government Operations Committee, but continue to refuse to testify about others as a matter of conscience. Both men have been indicted for contempt of Congress; Harvard did not suspend them. (Kamin is now employed in Canada.) Their defense will challenge the scope of the mandate of the Senate committee. Marcus Singer at Cornell has pleaded the Fifth Amendment in refusing to testify about former associates; he too has been indicted and has been relieved of his teaching duties.

New York City Teachers. Heavy pressure in New York led the Board of Education to vote that teachers may be required to inform about past associates, although the Superintendent of Schools is given the minimal discretion of indicating whether he believes such refusal should lead to dismissal. The NYCLU vigorously opposed this regulation: "Refusal to inform is not even a presumptive indication of bad faith, for it may well stem from moral scruple—which is itself the condition of *good* faith. . . . Put a premium on informing in one reference and it will be interpreted by many as applicable in another."

In June of 1955 the New York State Commissioner of Education ruled that teachers cannot be required to inform; undoubtedly further testing in the courts will result.

ACLU Policy. Thorough study of the whole problem of the teacher asked about other persons, study involving both the legal and moral aspects of the situation, led the national ACLU Academic Freedom Committee to arrive at a number of necessary distinctions: A teacher asked about another teacher's views and associations should distinguish among the decisions to be made. He *may be required* to decide in terms of his legal position as a witness, and on this point he should seek legal advice. He *may wish* to decide by reference to his personal moral code and conscience. He *must* decide in terms of academic freedom because he is a teacher. The ACLU position is this: questions about another teacher's views or associations are always to be considered improper because they immediately subvert that sense of freedom which is the life center of the academic process.

RELIGION AND CONSCIENCE

1. Conscientious Objectors

Jehovah's Witnesses. Last year's ACLU Report indicated that the federal courts had taken a firmer stand with respect to requiring from the government a full statement of the evidence upon which C.O. status was denied. The improvement in due process probably accounts for the fact that within the past twelve months more than 200 Jehovah's Witnesses cases were either won, saw the prosecution dropped, or successful on appeal.

Three cases decided by the U.S. Supreme Court are expected to have far-reaching effect. In the Gonzales case the Court ruled that the Department of Justice must furnish the claimant a copy of its recommendations to the appeal board, and that he must have an opportunity to reply to the recommendations before the board classifies him. The whole appeals procedure is thereby greatly improved. The Sicurella decision involved a C.O. who was denied status because he would engage in a theocratic war; the Court held that the test is one of opposition to participation in war, and not objection to all war; a claimant does not forfeit the law's coverage "because of his other beliefs which may extend beyond the exemption granted by Congress." The Witmer case was lost, but the high court nored that observations about an individual's appearance or manner could be considered by local or appeal boards only when reduced to writing.

Other C.O.'s. The Central Committee for Conscientious Objectors, also reporting for the July to June year, notes twenty prosecutions dismissed, eight acquittals, and thirty convictions. Among those convicted, five had refused civilian work in lieu of military service, and one—a second conviction—was for refusal even to register.

In the federal appellate courts there were twelve convictions affirmed and four reversals. Four of the convictions were in second prosecutions of non-registrants and two involved non-religious objectors.

The Chernekoff case involved a challenge of a C.O.'s sincerity on the ground that he had once been convicted for speeding and once for drunkenness. The Ninth Circuit Court of Appeals ruled that a man may have religious scruples even though he is not a saint. The hazardous course of the conscientious objector is revealed by this case; the Central Committee notes that reversible error was committed by Selective Service, The Department of Justice and the Army.

The most famous C.O. case continues its unhappy way. In January, 1955, Joel, Orin, Paul and Sid Doty had their two-year sentences affirmed by the Eighth Circuit Court of Appeals. The four brothers, all non-registrants, thus begin their second prosecution prison terms. Minneapolis newspapers have taken up this case as an issue of religious freedom but no legal defense against second prosecutions has yet been devised.

ACLU Action. The Union has continued to press the Department of Justice against second prosecution but it appears likely that legislative correction offers the only real hope. Continued protest is also lodged against the legislature's refusal to grant C.O. status to men who refuse to participate in warfare on philosophical or rational grounds.

The ACLU was active in the Chernekoff case, through its Southern California affiliate; the Metropolitan Detroit branch came to the assistance of two college students who were threatened with prosecution because they had bought advertising offering counselling for C.O.'s. The Union was also in touch with the Butgereit case which involved an American-born person threatened with loss of citizenship because of alleged departure from the country to escape the draft law. An adverse decision was overruled by the Board of Immigration Appeals.

Despite heavy pressure by veterans organizations and others, Governor Lee E. Emerson of Vermont refused to discharge a conscientious objector who was doing his civilian work as an employee of the New England state. The ACLU congratulated the Governor on his just regard of the law and the moral principle involved.

Citizenship Cases. In addition to the Butgereit case, there have been other important developments in the relationship of religious belief to citizenship. Arthur Jost, the Mennonite reported on last year,

actually received his citizenship in April, 1955. Four months earlier Wladyslaw Plywacki, denied naturalization because of his atheistic views, won his long fight.

Northern California ACLU is active in the cases of Mrs. Jean Bradley (Disciples of Christ) and Mrs. Ilse Scaccio (a pacifist and Jehovah's Witness) who have run into the naturalization oath which is interpreted to mean that, even if not willing to bear arms, the individual must be willing to work in a munitions factory. The Immigration service has ruled that Mrs. Bradley has not established that she is "well disposed to the good order and happiness of the United States," and Judge Louis Goodman has declared that Scaccio must "take the oath as it stands, or not at all."

2. Church and State

Rulings by State Officials. The ACLU and other groups interested in maintaining constitutional separation of church and state are heartened by three general rulings recently handed down by state officials. Such rulings are of importance because they often open the door to summary legal proceedings, and make unnecessary the slow and costly testing of the church-state issue, school by school or county by county.

Illinois Division of the ACLU, which has been fighting the Johnsburg, Ill., case for some time, may now use a formal opinion given the State Superintendent of Public Instruction by the Illinois Attorney General, Latham Castle, who has specified a number of practices which are improper in public schools: use of religious reading material when "such use is not merely occasional," "recitation of prayer of a sectarian nature," religious instruction on school premises during school hours, and the display of "objects or symbols of a sectarian nature used primarily to promote sectarian purposes."

In California, Attorney General Edmund G. Brown has ruled: the Bible may not be read in public school classes; it may be used for reference, literary or historical study, and other non-religious purposes; the Gideon Bible may not be distributed through the public school system; religious prayers may not be made part of the public school curriculum. On Bible reading the opinion said that: "reading the sacred writings of the Christian religion in public school classrooms would constitute a governmental preference in favor of Christianity, thus denying to other religions the absolute impartiality commanded by [the California constitution]." And with respect to prayers, "For atheist or agnostic children, daily prayers would be a constant reminder of the conflict between home and school, and might well be a disruptive element which would weaken the moral influence of parent and teacher alike."

A sharp dispute arose in Vermont when Paul Blanshard, author of several studies critical of Roman Catholic power, objected to religious classes sponsored by Protestant groups. Despite violent objection, much of it from outside the state, Attorney General F. Eliott Barber, Jr., finally gave an opinion warning that public school property could not be used for religious classes even though no public money was involved and all sects had opportunity to participate. He also stated that "released time" programs were legal but that they must meet three tests: 1—local board approval, 2—non-interference with regular curriculum requirements, and 3—voluntary participation. The School Board of Education has embodied this opinion in a warning to all Vermont school systems. In contrast the Nevada Attorney General has ruled "released time" programs unsupported by Nevada law and violative of the U.S. Constitution.

An old issue, that of teaching nuns, has again risen in Kentucky where a Franklin County Circuit court has ruled that Roman Catholic nuns may teach in public schools. As in the New Mexico case, the ACLU holds, in the intervening brief on appeal, that while nuns may properly teach (as long as they teach like any other public school teacher) they may not do so in religious habit because of the inescapable intrusion of a sectarian coloring.

Geographical Differences. In Mississippi a bill passed prohibiting the payment of "any funds to any institution . . . owned, or operated, or managed, or controlled in whole or in part by any church or by a religious society. . . ." Massachusetts let die in committee exactly contradictory legislation permitting such payments to schools, hospitals and "charitable organizations" under religious control.

A searching analysis of the whole problem arose in a Pennsylvania case where it was ruled that the more than $250,000 given each year in Allegheny County for the care of delinquent, neglected and dependent children could not be paid to sectarian institutions. It was brought out that there were no public institutions available; the judge recognized that it would take time to make the necessary transition but held that the Pennsylvania constitution was clear on this point. He rejected the arguments that the willingness of the state-created agency to make the payments had bearing, and that the payments were not grants but payments for services rendered.

Religious Literature. Ammon Hennacy, associate editor of a magazine, the *Catholic Worker,* and author of the *Autobiography of a Catholic Anarchist,* in November, 1954, spent five days in jail because he refused to pay a fine for selling the magazine and book on the streets in New York City, without a peddler's license. Lower and appellate division courts upheld the conviction, but the state's highest court

unanimously ruled that the prosecution had failed to prove that Hennacy's selling was a commercial venture.

Right to Perform Marriage. Father Oscar Galemberti, organizer of Our Lady of Fatima Spanish Catholic Church, is being represented by the New York Civil Liberties Union in a test case. City authorities have refused to grant him a license to perform marriages, allegedly because the word "Catholic" in the name of his church might cause confusion.

Community Problems. A proposed poll of San Leandro, Calif., high school students to discover how many were Roman Catholic adherents was agreed to by a school principal; insistent demand by the Northern California ACLU led the official to reconsider and to rule that such an inquiry would violate the state constitution. A similar census, this time requested by Protestant groups, was proposed for San Francisco public schools but ruled illegal by the department's counsel.

The right of boards of education to close public schools in order to permit teachers and students to attend a sectarian religious convention was tested in Bristol (Mass.) Superior Court in November, 1954. Twenty-six taxpayers, informally advised by the Civil Liberties Union of Massachusetts, obtained a court order requiring that the schools be kept open during the Roman Catholic conference in New Bedford.

In January, 1955, a California appellate court issued a peremptory writ of mandamus to the City of Piedmont to allow the Corpus Christi Catholic Church to build a parochial school there. The Piedmont zoning law, excluding private schools from more than 98 per cent of the city, was challenged as unconstitutional by the Roman Catholic Welfare Corporation, aided by friend of the court briefs from the Protestant Episcopal Church of California, the American Jewish Congress, and ACLU's Northern California Branch.

School Buses. *Church and State,* published by Protestants and Other Americans United for Separation of Church and State, reports that controversial legislation permitting and financing the transportation of school children to parochial schools has been pressed during the past year, in Maine, Maryland, Missouri, New Hampshire, New Mexico, Vermont and Alaska. Arguments for "general service" to children, questions of cost, and the problem of payment to the school or the children are all involved. The 1947 decision of the U.S. Supreme Court in the Everson case held that such bus service did not contravene the U.S. Constitution but state constitutions and laws are still in question.

Family Problems. Two Massachusetts cases have raised the question of adoption across religious lines. In the Goldman case the U.S.

Supreme Court refused to review a state supreme court decision upholding such a ban. In the Ellis case, the adoptive parents have announced they will defy the law and have disappeared with the child; they have stated their willingness to turn the child back to the natural mother if she will rear it herself but refuse to do so in the face of her avowed intent to put the child in an institution. The ACLU has followed these cases with interest in the church-state issue involved but has as yet found no way to overcome the refusal of the Supreme Court to consider the constitutionality of such adoption laws.

The Appellate Division court ruled in Rochester, New York, on January 13 that surgery, and not the "forces of the universe," should be relied on for treatment of a twelve-year-old boy's hare lip and cleft palate. The boy's father had refused on religious grounds to permit an operation to correct the disability but Erie County Children's court had ordered that the boy himself should make the decision. When he decided against the operation, the county health department secured a ruling from the high court that would declare the boy a neglected child and remove him from the custody of his parents long enough for surgery to be performed.

Part II. JUSTICE UNDER LAW

Discretionary power does not carry with it the right to its arbitrary exercise.

Circuit Judge Charles Fahy for the U.S. Court of Appeals for the District of Columbia Circuit, in *Shactman* vs. *Dulles,* June 23, 1955.

THE POLICE

1. Police Brutality

Most criminals are ready to use physical force, and even fatal weapons, against their victims, society in general, and the police who are the sworn protectors of society. It is understandable why some policemen also develop a tendency to apply physical force, especially since they must often act in a moment of split-second crisis. Fortunately, American police officers are becoming increasingly professional in their attitude toward their work, and are also more adequately familiarizing themselves with the constitutional guarantees which protect all persons, even criminals. The ACLU, looking at the whole picture, can discover no major police force in the United States which appears to condone police brutality; and such known lapses as occur are matters of human failure involving individuals or a limited chain of command. There is, however, much to be done in educating police authorities to admit and take responsibility for such brutality as does occur.

New York City. In the Caminito case the federal Court of Appeals for the Second Circuit granted *habeas corpus* to a man whose conviction was based on a coerced confession. After arrest he had been held incommunicado, questioned on and off for 27 hours, and confronted by three policemen impersonating supposed witnesses to his alleged crime; after signing two confessions, and forty hours after his arrest, he was taken before a magistrate. The Appeals court said that psychological torture has no place in American society: "The confessions obtained by these loathsome means were no more evidence than if they had been forged. . . ." The conviction had previously been affirmed by the highest New York state court.

Also in New York City, the Robert Cox case was finally closed. Mr. Cox was arrested by Patrolman James A. Tierny on New Year's Day, 1951. Tierny took his prisoner to the station house, beat him, kicked him in the groin, stuck the muzzle of a pistol in his mouth, and

taunted him about his religion. Later the charges against Cox were dropped and Tierny was dismissed from the force; but it was not until January, 1955, that the City settled for $15,000 a suit for damages.

Denver. An off-duty policeman, not in uniform, was alleged to have beaten up two private citizens in connection with an automobile accident. On appeal, the officer was acquitted.

Pressure from several sources, including the Colorado ACLU, led to an inquiry by the Denver Human Relations Commission which found as a fact that several complaining witnesses against the police officer were required to wait several hours to make their point, and then later discovered that their complaints had not been filed. The ACLU is continuing to press for better procedure in the handling of charges against the police.

San Francisco. From California comes a report of another kind of brutality. ACLU of Northern California has received frequent complaints about a state parole officer, Mrs. Frances J. Sullivan. In July of 1948 she was severely reprimanded by her superiors when ACLU discovered she had illegally imprisoned a woman parolee. As a result of the investigation, the powers of women parole officers were changed. The most recent complaint, reported in March of this year, charges Mrs. Sullivan with refusing to let one of her wards get married although the woman had court approval. These complaints are not in harmony with the general reputation of the staff of the California parole system.

2. Other Unlawful Action

Action without Warrant. ACLU Southern California branch intervened on behalf of Mr. and Mrs. Clark Rynders who are suing for $30,000, alleging illegal search and seizure and assault and battery by five Los Angeles policemen. The officers were in civilian clothes and had no warrant either for search or arrest; they suspected bookmaking operations because of frequent telephone calls from Rynders to his wife —explained by the couple as merely acts of affection.

The Hampden County Chapter of the Massachusetts CLU asked for an investigation of a police raid on the home of a dangerous criminal who had escaped from prison. The Springfield, Mass., police chief claimed the right to search any building in which an escaped convict might be hiding, but did not make clear why he had not obtained a warrant.

Greater Philadelphia ACLU won a victory when the Boon brothers, Millard and Ashley, were acquitted by a Philadelphia jury on charges of assault and battery and unlawfully resisting officers making an arrest without a search warrant. The defense pointed out that the police,

having no search warrants, were trespassers and that the charge of resisting arrest could not hold since there were no grounds for the arrest.

Dragnet Operations. A most obnoxious police practice, from the civil liberties point of view, is the rounding up of scores of persons at the time of some public occasion or as part of a police "drive" against crime. Action is usually based on a general vagrancy statute and little discretion is apparent in making the arrests. Thus in New York City, on a series of weekends, the police arrested hundreds of "undesirables" and processed them through court, sometimes at a rate of 40 to the hour. At an NYCLU public meeting on police practices, Police Commissioner Adams said he would be glad to discontinue the practice if given better laws to work with. At the same time a municipal court judge called the practice useless and inhumane.

In the fall of last year a pernicious system of road-blocks and search without warrant was brought to an end in Chicago after ACLU's Illinois Division and several local papers had protested vigorously. The Mayor advised Police Commissioner Timothy O'Connor that this system of checking auto and driver law violations was "bad public relations," but did not comment on the fact that the practice violated the Fourth Amendment protection.

In North Richmond, California, a Negro community, Inspector Ray Stoeffels headed a drive to apprehend prostitutes, gamblers, and dope addicts and peddlers. A "task force" was made up of local officers, state narcotics agents, and U.S. military police. Four hundred persons were rounded up. None were charged with prostitution, gambling, or dope use or sale; 43 were booked on vagrancy charges and three for possessing concealed weapons. Nine of the "vagrants" pleaded guilty, although none appear to have had counsel. Six cases were dismissed. The remaining 31 were acquitted when a deputy sheriff, the only prosecution witness, admitted he could not identify a single defendant. Northern California ACLU was successful on behalf of the seven persons for whom it intervened and also widely publicized the whole farce.

Some hope may be found in the decision of a California intermediate appellate court striking down as unconstitutional a law permitting a conviction for vagrancy of anyone found to be an "associate of known thieves."

False Arrest. The arrest of two Puerto Rican youths in New York City in June of 1954, on charges of attempted rape, had an extraordinary outcome. In December the complaining witness confessed that she had lied and the boys were released. In January, 1955, the two arresting officers were cited for "meritorious police duty." But in the meantime, Assistant District Attorney Peter Andreoli was probing discrepancies in the transcript of the record of the preliminary hearings. Eventually

it was discovered that a witness favorable to the boys had not been called. The final outcome was the withdrawal of the citations and the imposition of penalties on the policemen, a clearing of the defendants' names, and notable success for Mr. Andreoli in his determination that justice should be done.

Partial redress was accomplished when the final chapter was written in the case of Louis Hoffner. Convicted of murder and given a life sentence in 1941, Hoffner was released in 1952 when it was discovered that the prosecution had concealed evidence that one of the two witnesses to the crime had been unable to identify the defendant. In 1954 the New York State Court of Claims awarded Hoffner $112,000 as a "mere token," and indicated that the award would have been much greater if Hoffner had not had previous convictions and a somewhat weak employment history.

Last year's ACLU report told of an Illinois case supported by ACLU Illinois Division, in which a jury awarded $4,000 in a false arrest suit, only to have the trial court cut the sum to $40. The Illinois Supreme Court, on appeal, reinstated the jury award.

Narcoanalysis. At the University of Minnesota, the director of protection and investigation and the head of the university hospitals division of anaestheology have been using "narcoanalysis" to get confessions in criminal cases where routine questioning has failed. The technique, one of questioning under drugs, is made available to law enforcement officers, but only when the subject is willing. Individual protests have been made by Minnesota ACLU members; Monrad G. Paulsen, Minnesota university law professor, asked whether a person should be permitted to put himself into the hands of investigators with his highest functions impaired, whether a drugged subject could invoke his privilege against self-incrimination should the investigation go too far afield, and whether those who refuse the test are presumed guilty. Members of the legislature have also shown concern.

Criticism of the Police. The right of the citizen to complain about the police has been upheld by magistrate Evelyn Richmond in New York City who dismissed an action for criminal libel filed against Jerome Fine by Sgt. George Hartwell. Fine had written a letter to the Police Commissioner charging that Hartwell was "drunk and in a stupor" while on duty. Commenting on the judge's favorable ruling, NYCLU counsel said, "It has now been held by a court that letters may be sent with impunity to a public official complaining about a subordinate. One of the favored methods in combating violations of civil liberties is to make or recommend such complaints. We [have been given] . . . assurance that there [need] be no fear of criminal libel prosecutions as a reprisal for such complaints."

WIRETAPPING

The desire of the Department of Justice for greatly enlarged wiretapping powers, described in detail in last year's *Annual Report,* has not yet been met by Congress. The ACLU again, through the testimony of its Washington Office Director, made known its strong opposition.

Malin Speech. In a major speech, before the American Academy of Political Science in April of this year, Patrick Murphy Malin reviewed the whole problem and set forth the Union policy. He began by noting the conflict between the guarantees against search and seizure given by the Fourth Amendment and the current need for protection against forces bent on destroying the nation's safety. He then considered the history of the legal status of wiretapping, beginning with the 1928 Olmstead decision and the 1934 Federal Communications Act, Section 605 of which directs that " no person not being authorized by the sender shall intercept any communication to any person. . . ." This is still the law, though the Department of Justice gives it a narrow interpretation by holding that wiretapping is illegal only if followed by divulgence to persons other than the investigating authorities.

Malin then said he was ". in considered choice between values and between risks, on balance strongly opposed to all wiretapping—by anyone, at any time, for any purpose. . . . I want the Court or the Congress to make absolutely clear that all wiretapping is illegal, even when practiced by the Department of Justice, or authorized by a State. I want prosecution of everyone who engages in it, or orders or allows it. I want the States to make wiretap evidence inadmissible in court." Failing the attainment or postponement of such a goal, Malin proposed eleven "minimal safeguards" that would drastically restrict the justification for wiretapping, the number of persons permitted to make taps, and the length of time wiretap authorizations could be in effect, and would require meticulous "book-keeping" of wiretaps (and summary statements to be made public at regular intervals).

Wiretapping in the States. As Malin pointed out in his speech, the Supreme Court has held that Section 605 of the federal law also extends to intra-state communications and would thus seem to make illegal the wiretapping authorized by the laws of a half-dozen states in the Union. However, the Supreme Court has not explicitly so ruled. As a result, the furor at the federal level has resulted in the past year in similar wrangling in the States. Current public concern with the problems of internal security and organized crime has helped stimulate the controversy.



POISONOUS SPIDER

Fitzpatrick in the
St. Louis Post-Dispatch

California. The state Attorney General has ruled that a district attorney may start criminal proceedings on evidence obtained by wiretapping. But, he adds, police officers who install the wiretapping devices are themselves subject to criminal and civil liability.

New Jersey. In April of this year, ACLU's efforts to prevent any weakening of New Jersey's anti-wiretapping law proved successful when a measure to legalize taps in certain areas of crime died in the state legislature. The bill was originally sponsored by the state Attorney General, but Governor Meyner and State Senator Malcolm Forbes, Republican leader, later announced their opposition to any change in the basic law.

Emil Oxfeld, the Union's New Jersey State Correspondent, reminded the state authorities that wiretapping is, in effect, ". . . a general dragnet embracing all the fish in the water without distinction as to size, nature, or color, season of the year and status. Wiretapping is a dirty business, and it is impossible for anyone to involve himself in it without contributing to the lowering of standards of justice. . . ."

Pennsylvania. On January 11, 1955, Chief Justice Horace Stern, of the State Supreme Court of Pennsylvania, delivered an opinion that there was "no doubt whatever" that the Federal Communications Act did not bar wiretapping evidence in state courts. The remark was made during an appeal to the court in the case of Isaac Chaitt, convicted solely on wiretap evidence of bookmaking and being a common gambler. ACLU filed a friend of the court brief supporting the position taken by Chaitt's attorney that, "Every time a police officer testifies to wiretap evidence, the judge of the court admitting the evidence is condoning the commission of a Federal crime," in order to obtain a conviction in the State court. But Chaitt's conviction was upheld and the U.S. Supreme Court refused review. A few months later State Senator Harry E. Seyler introduced a bill drafted by the Philadelphia Bar Association that would outlaw wiretapping in Pennsylvania. Another wiretap bill, backed by Philadelphia's District Attorney, Richardson Dilworth, and permitting wiretaps by police with court authorization, is opposed by Philadelphia ACLU and the local Bar Association.

New York. A major public controversy developed when William J. Keating, an official for an important private anti-crime organization in New York, charged that police had been present at the uncovering of a major illegal wiretap enterprise but had apparently been negligent in bringing accusation. Before a grand jury Keating refused to disclose the sources of his information and was given a four-day sentence.

Although there was no legal basis for his refusal, popular opinion clearly considered him a crusading hero.

New York Civil Liberties Union joined the ACLU last January in applauding Supreme Court Justice Samuel H. Hofstadter's decision denying three New York City Police Department applications to tap telephone wires. The two groups called the decision "a major victory in the campaign to preserve the constitutional right of privacy" and predicted that it would "aid greatly in . . efforts to get the State legislature to give serious consideration to bringing the State law into line with Supreme Court decisions that prohibit the introduction of evidence obtained by wiretap in Federal cases." Justice Hofstadter turned down the wiretap applications on the ground that the potential results would not be sufficient to warrant the invasion of privacy involved. Later in the year NYCLU made its position known to a state legislative committee investigating wiretapping.

California Strikes down "Bugging." The common police practice of concealing a listening device (or a recording machine)—as distinguished from a telephone tap—is known as bugging; up to the present it has been generally approved by the courts. The Los Angeles police charged 16 persons with bookmaking on the basis of evidence so obtaianed, but the state Supreme Court has ruled the practice in violation of the U.S. Constitution. The Court said: "That officers of the law would break and enter a home, secrete such a device and listen to the conversation of the occupant for over a month would be almost incredible if it were not admitted. Few police measures have come to our attention that more flagrantly, deliberately and persistently violate the fundamental principle declared by the Fourth Amendment."

Chief of Police Parker declared that the ruling has "conceivably set law enforcement back 50 years," and an assistant attorney general observed that the decision was the "Magna Carta of the criminal." To the latter remark, California Supreme Court Justice Jesse W. Carter replied: "I am glad that the attorney general's office has discovered the Magna Carta. Now I hope it will discover the Bill of Rights."

PROCEDURE IN THE COURTS

Significantly, this section, which covers the relationship of court procedure to the quest for justice, is one of the most detailed in this year's *Annual Report.* Although every determination did not necessarily support the civil libertarian point of view, it is clear that the courts are confronted by an unusual number of constitutional problems which lie in the general area of due process.

1. An Attack Upon a Court

After Judge Luther Youngdahl of the Federal District Court had dismissed certain counts of the indictment against Owen Lattimore, the government motion asked that he disqualify himself from presiding at the forthcoming perjury trial on grounds of personal bias and prejudice. The judge refused and called the affidavit "scandalous." He charged that the affidavit was based on "the virulent notion that a United States judge who honors and adheres to the sacred Constitutional presumption that a man is innocent until his guilt is established by due process of law has a 'bent of mind' that disables him from conducting the fair and impartial trial to which the accused and the government are entitled."

After the motion had been filed, but prior to the judge's ruling, ACLU Executive Director Patrick Murphy Malin wrote to Attorney General Brownell stating that the government's request was a "blow at the independence of the judiciary," and an attempt "to hand-pick a judge who would decide legal questions in the way the government wants them decided." Putting aside entirely both the judge's decision on the first indictment and the merits of the second indictment, Malin analyzed the chief elements in the government charge of bias:

1. The government claimed that Judge Youngdahl gave the wrong reasons for dismissing the first count of the first indictment, as evidenced by the fact that the Court of Appeals affirmed his decision on different grounds. But, said the ACLU letter, our judicial system provides that "errors, if any, should be corrected by taking appeals, not by accusing a judge of bias and prejudice."

2. The government objected to the judge's recital of the background of the case and the proceedings prior to the indictment. "Our law books," said the ACLU, "would be sterile if our judges . . . could not preserve for history the complete background of vitally important cases that come before them."

3. The government said that Judge Youngdahl expressed serious doubts as to how certain legal points might be decided after the trial. Malin noted: "The government certainly introduced a novel idea that because the judge saw that questions might be resolved differently after a trial, while presently denying Lattimore's contentions and ruling in favor of the government, he was therefore prejudiced in favor of the defendant."

It is significant that the government did not take an appeal from Judge Youngdahl's denial of the motion.

2. General Problems of Jurisdiction and Procedure

Neal Case. From June of 1954 to July, 1955, the ACLU was deeply and continuously involved in attempts to obtain favorable appellate action on vital procedural questions raised in the case of Don Jesse Neal, a convicted murderer. (See last year's *Report* for the earlier phases of ACLU action which forestalled immediate execution.)

The first line of action rested on the ground that Neal's attorney had not been present at important aspects of the proceedings. The U.S. Supreme Court declined review of this matter. On a *habeas corpus* action, the ACLU and its Colorado affiliate, defeated in a decision by the U.S. District Court, got a stay of execution from the U.S. Circuit Court. But that Court then affirmed the decision, and the U.S. Supreme Court refused review.

Neal's local attorney began a new proceeding in the state Supreme Court claiming that the prosecution had knowingly used perjured testimony and wilfully suppressed evidence, and that the court-appointed defense counsel at the trial had failed to raise defenses known to them. The Utah Supreme Court denied a hearing; Justice Tom Clark of the U.S. Supreme Court granted a stay, but on April 4, 1955, the U.S. Supreme Court denied review.

Neal's own counsel then took the above new points into federal district court on a *habeas corpus* petition. That court granted a hearing at which ACLU's staff counsel was appointed as Neal's counsel. Although, in the opinion of the ACLU, the charges against the prosecution were uncontradicted, the court denied the petition but issued a certificate of reasonable doubt and granted a stay of execution. The Circuit Court also denied, and attempts to get a stay from the U.S. Supreme Court were in vain. The Utah Pardon Board refused any ameliorative action.

The next action was an attempt to get a new trial on the ground that Utah's five-day limit on use of newly discovered evidence after conviction to get a new trial was unconstitutional, unless a writ of *coram nobis* could be had (an ancient remedy designed to bring before a court facts of which it was unaware at the time of trial). The state judge denied the motion for a new trial. The Utah Supreme Court ruled for the first time that *coram nobis* was available in Utah but that the state judge was justified in denying it in this case. This decision was brought to individual justices of the U.S. Supreme Court (Justices Black, Burton, Frankfurter and Harlan) on applications for a stay of execution without success.

Neal was executed by a firing squad on July 1, 1955. In commenting on the case, Patrick Murphy Malin said: "We are most disturbed at the outcome. . . . As nearly as we can make out, the U.S. Supreme Court refused to intervene because it felt that state and lower federal courts should deal exclusively with the kinds of questions we raised . . . [but]

other federal courts have ruled exactly to the contrary to what was ruled by the courts in the Neal case, and we had hoped to get a final Supreme Court decision on these issues." And Malin added, "We believe that due process has been violated when a man can be sent to his death without a new trial in the light of the facts adduced in the Neal case."

Habeas Corpus. The ACLU, through its Washington office, has entered opposition to a bill proposed by Rep. Emanuel Celler which would limit severely the jurisdiction of federal courts in the issuing of writs of *habeas corpus* to persons imprisoned under state law, by requiring a showing that there had been no fair and adequate opportunity to raise and have determined a substantial federal question. Recognizing that the bill is the result of recommendations by hard-pressed federal judges, whose courts are flooded with *habeas corpus* petitions, the Union pointed out that the courts would still have to examine each petition to see whether the new standards were met; indeed, there might well be subordinate litigation challenging the application of the barrier itself. It would appear that the applications themselves might be disposed of with less litigation and difficulty, on their merits.

For example, in the case of Stephen J. Herman, the ACLU and a Pittsburgh cooperating attorney successfully asked the U.S. Supreme Court to review the Pennsylvania Supreme Court's denial of a petition. In 1945 Herman pleaded guilty to several crimes after he had allegedly been held incommunicado for 72 hours, questioned intermittently, subjected to threats to himself and his family, physically assaulted, refused information as to the indictments and not advised of his right to counsel. Herman was only 21 years old and had had only six years of schooling. The Pennsylvania courts held that the confessions were in order and that he had had ample opportunity to ask the lower court for help, and emphasized his previous criminal record. The ACLU is contending that the denial of a petition for a writ of *habeas corpus* without a hearing is inconsistent with the Fourteenth Amendment.

Military vs. Civil Jurisdiction. Robert W. Toth, former Air Force sergeant, was arrested in 1953 charged with having killed a South Korean citizen, and taken to Korea for military court trial. On a *habeas corpus* petition he was returned to this country. Toth's contention was that his discharge from the service ended the control of the military court over him. The case reached the U.S. Supreme Court which by a 6-3 decision in November, 1955, upheld Toth. The Court suggested that legislation might be needed to permit the trial in regular federal courts for offenses committed while in service but discovered after discharge. The Court was concerned both about Toth's civil rights and about encroachments by military tribunals upon the jurisdiction of the federal judicial system.

Due Process for Juveniles. In many states wide latitude is given general and special courts in the handling of criminal charges involving juvenile defendants; investigative reports not subject to cross-examination often constitute important evidence, and the courts impose indefinite sentences. Greater Philadelphia ACLU took the Holmes case, involving a sixteen-year-old, to the U.S. Supreme Court, charging that the youth's constitutional rights to due process were less well observed than those of hardened adult criminals, but review was denied.

One-man Grand Jury. Michigan law authorizes a judge to act as a "one-man grand jury." Two persons were called as witnesses in such a proceeding; the judge was convinced that one of the men had perjured himself, and the other refused to answer without advice of counsel. The judge, in open court, then held both in contempt of court and imposed a sentence. In a 6-3 decision the U.S. Supreme Court reversed the Michigan Supreme Court, holding that ". . . no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome."

Recanting Witnesses. The Department of Justice has announced that it will investigate prosecutions and hearings in the course of which Harvey Matusow, Mrs. Marie Natvig and Lowell Watson now claim they lied. The ACLU addressed a letter to the Attorney General expressing its gratitude for the contemplated inquiry, but noting that there is a heavy obligation on the government to make sure that the testimony of its accusatory witnesses is true. The letter expressed particular concern about the allegation by these witnesses that government attorneys were responsible for the false testimony. Matusow has since been held in contempt for allegedly perjuring himself by recanting. Mrs. Natvig has been convicted of perjury in her recantation.

Public Defenders. The ACLU has endorsed legislation proposed by Attorney General Brownell calling for paid public defenders to represent indigent defendants in criminal cases before federal courts. Recognizing that the long-established system of court-appointed attorneys has often served well, the Union feels that the rights of defendants can be even better protected by counsel trained in the criminal law. However, it should be noted that U.S. District Judge Dimock in a recent address strongly opposed the idea of public defenders, holding that such a concentration of legal service under government authority would be a step toward a totalitarian framework.

Relatedly, the American Bar Association has established a special committee to provide free legal service for government workers involved in security cases—which are often complex, long drawn-out, and beyond the pocketbook of an ordinary person.

3. Pre-trial and Post-trial Problems

Bail Matters. Prior to trial, the four defendants in the Colorado Smith Act prosecutions were held in jail unable to post bonds of $15,000 to $25,000. Colorado ACLU sought to file an *amicus* brief with the U.S. Court of Appeals on the bail issue, but was denied. The Union held that these figures were "excessive and discriminatory," and higher than those generally set in prosecutions under this law. Furthermore it was pointed out that the Communist Control Act of 1954 lists as one of the elements of evidence establishing Communist Party membership, "financial contributions to the organization in dues, assessments, loans or any other form"; this fact has made it more difficult for Smith Act defendants to raise bail.

In Cleveland, Ohio, Hyman Lumer, a Communist, was charged with possession of a false driver's license. Bail was set at $25,000 which is fifty times the maximum fine imposable upon conviction of this misdemeanor. Ohio CLU investigated and found that Lumer had no police record; an *amicus* brief was filed and bail was reduced to $1,500.

The Lattimore Case. Owen Lattimore was charged with perjury in 1952, the Department of Justice alleging that he was a "Communist sympathizer" or a "promoter of Communist causes" and that he lied in saying he was not. These general charges in the indictment were twice thrown out by Judge Luther Youngdahl, in their original and their rewritten form. Each time the U.S. Circuit Court supported the lower court, although in the first instance by a somewhat different line of reasoning. This meant that the federal appellate court would not permit a man to be tried before a jury which would have to speculate about the significance of similarity and dissimilarity in the realm of ideas.

Five minor counts in the indictment charged specific perjured statements about factual matters.

In June, 1955, the Department of Justice announced that it would not appeal to the U.S. Supreme Court the second adverse decision by the Circuit Court and that it would drop the whole case because "there [was] no reasonable likelihood of a successful prosecution" on the minor counts.

Officer Regan. Patrolman Regan of New York City was convicted of contempt of court for refusing to answer a grand jury about bribes he might have received. New York law provides immunity from prosecution for a witness whose testimony reveals criminal activity. But a New York City charter provision requires all employees of the city to sign a waiver of that immunity. Regan signed the waiver; later he claimed that he signed under a "pattern of duress and lack of understanding."

In a 6-2 decision the U.S. Supreme Court ruled against Regan, recognizing that a prosecution could take place if the testimony made it possible, but holding that such a result would arise from a voluntary choice made at the time of employment. If the waiver was invalid, obtained under pressure, he would be protected by the state immunity law. Justices Black and Douglas, in dissent, held that the state was using coercion to compel testimony, and forcing a man to bargain away in advance the benefits of the Bill of Rights.

Matters of Sentence. Frank Hashmall was convicted in Ohio of having used a false name in applying for a motor vehicle certificate; he was given a ten-year sentence, calling for consecutive service of the penalty on different counts. On appeal the Ohio Supreme Court unanimously ordered concurrent service, stating that "the record discloses that the trial court probably did this [ordered consecutive service] because he was advised that the defendant was a Communist. However, a Communist is entitled to even-handed justice in our courts." Ohio CLU then asked Governor Frank Lausche to commute the sentence since Hashmall had already served 18 months, asserting that "political affiliation is not a proper consideration in determining a sentence for violations of this sort . . it is important that we not be panicked into applying the same dictatorial principles of which the Communists are guilty, we urge you to eliminate any suspicion that there exists a double standard." Later the Union urged the parole board to consider the case on its merits, and Hashmall was released after 27 months. He was then arrested by federal officers and in November was brought to trial in a Smith Act prosecution.

In the Nathan Kaplan case, Judge Edward Weinfield of the federal bench upon a review of all the facts has come to the conclusion that Kaplan is innocent of the crime for which he is serving a twelve-year sentence. The United States Pardon Attorney nevertheless refuses to grant the pardon recommended by the judge.

Prejudgment. Attorney General Brownell will hold a hearing on whether the National Lawyers Guild should be designated a Communist organization on the Attorney General's subversives list. And the ACLU has strongly objected to the Attorney General's being the person to make such a determination on the ground that he has prejudged the matter. Patrick Murphy Malin, ACLU executive director, contends that Brownell's public statements about the Guild show "clearly that the organization would appear before a prejudiced tribunal and would thus be denied the fair hearing which is the essence of due process." Malin's statement was in comment upon a decision by federal Judge Charles F. McLaughlin denying the Guild's request for an injunction to bar the hearing; the judge ruled that it should not be assumed that

the proposed hearing would be conducted other than fairly." This finding is in contrast with the Attorney General's 1953 statement before the American Bar Association that he had already determined the nature of the Guild and that he proposed to designate it as subversive. This decision will be taken to the U.S. Supreme Court.

4. The Fifth Amendment

Judge Irving R. Kaufman, who presided at the Rosenberg atomic espionage trial and sentenced the defendants to death, has spoken out sharply against any move to repeal the Fifth Amendment, characterizing such a trend as "dangerous radicalism." He noted that the founding fathers "would have been numbed with disbelief" had they been told such action would ever be contemplated.

The interpretation of the constitutional guarantee against self-incrimination continues to be a matter of serious debate. The libertarian position of Dean Erwin Griswold of the Harvard Law School has received wide notice. A different view, which in essence supports unfavorable inferences when the privilege is claimed, has been taken by C. Dickerman Williams, former ACLU Board member, in a recent issue of the *Fordham Law Review*.

Quinn, Emspak, Bart, O'Connor and Lamont Cases. In three recent decisions the U.S. Supreme Court clarified the ground rules for raising the privilege against self-incrimination before Congressional investigating committees. In the Quinn and Emspak cases the court held that "no ritualistic formula" is indispensable and that a witness may raise the privilege in more than one way as long as his intent is plain. The Bart case emphasized that a witness must be given a clear choice between standing on his objection and being ordered to answer.

The court did not address itself to the First Amendment defense raised by Quinn and Emspak. There is hope that this fundamental constitutional question will be met in the O'Connor case where the witness before the committee did not refuse on grounds of self-incrimination. The refusal of Corliss Lamont to answer, also on First Amendment grounds, resulted in an indictment which was recently invalidated by a federal District Court because the indictment was improperly drawn and because there was no showing that the subcommittee which questioned him had even been validly authorized; the government has announced it will appeal this ruling.

Although the Quinn, Emspak and Bart cases were decided 6-3, both the majority and the dissenting justices use language which offers hope for further rulings in protection of the established tradition against self-incrimination: 1—all the justices seem agreed that no adverse inference should be drawn against a person raising the privilege, 2—Justice Reed

(in dissent) said that privilege "is designed to excuse the guilty and the innocent alike from testifying when prosecution may reasonably be feared from compelled disclosures. No moral turpitude is involved in such refusal to answer . . . ," and 3—the majority in the Quinn case said "the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs unrelated to a valid legislative purpose. Nor does it extend to an area in which Congress is forbidden to legislate."

Unfavorable Inference. Leo Sheiner, a Florida attorney in practice many years, refused, on grounds of self-incrimination, a reply when asked by a state judge whether he was a member of the Communist Party in a disbarment proceeding resulting from the attorney's previous invocation of the Fifth Amendment before the Senate Internal Security subcommittee. No witness had testified against Sheiner; no evidence was presented of improper behavior. The ACLU vigorously criticized the disbarment action; the Union stated its awareness of the fact that the Communist movement is part of the Soviet conspiracy, but noted that there was no evidence before the court of Sheiner's membership. Furthermore, if he were a member, the ACLU would hold that some proof would have to be offered of the attorney's having acted inconsistently with his professional duties. On appeal, the Florida Supreme Court reversed.

The Shantzek Case Paradox. Also in Florida, 14 persons raised the privilege and refused to answer before a Dade County grand jury about Communist activities and associations prior to the two-year period covered by a state "Smith Act" law. They were held in contempt. The ACLU filed an *amicus* brief with the Florida Supreme Court pointing out that if the grand jury was concerned with possible prosecution the witnesses were protected by the statute of limitations, and there was no basis for the investigation; or, if no prosecution was contemplated, the grand jury was acting outside its jurisdiction.

The Florida Supreme Court ruled that membership in the Communist Party or its front organizations is a felony under both U.S. and Florida law, and that an answer might have furnished a link in a chain of evidence resulting in a prosecution; the privilege, therefore, was properly raised. Paradoxically, this appears to be the first judicial ruling that membership in a "front" organization may be criminal.

5. Problems of Evidence

The Masked Witness. In a decision which received scant notice, U.S. District Judge Thomas J. Murphy in New York City ruled against the Department of Justice and granted naturalization to a Czech alien,

Karel Mazel, who had been accused by a masked witness before a Congressional investigating committee of past or present membership in the Communist Party. This test case was sponsored by the ACLU and handled by a cooperating attorney. Both the U.S. Secretary of State and the head of the U.S. delegation to the UN attacked the testimony of the witness; the Immigration authorities admitted that even they could not learn the identity of the witness who testified before the McCarthy committee. Judge Murphy found Mazel attached to the principles of the Constitution and devoted to the welfare of the United States.

Incompetent Witness. The Illinois Division of ACLU is appealing to the State Supreme Court in behalf of Harold Miller, a Negro Marine veteran, who is serving a life sentence for rape of a woman who suffers from schizophrenia with delusions and hallucinations.

The woman, Barbara Latimore, was beaten on October 26, 1951; she claimed she had been raped although a hospital examination did not support this. She later identified Miller on a streetcar, and he was arrested. The only identification was a common type of signet ring he wore, and he had five witnesses who had been with him at the time watching a fight on TV. But the jury at the first trial deadlocked and the judge declared the second a mistrial.

Not having any more funds for his defense, Miller waived a jury at the third trial to save expense. After hearing two alibi witnesses, Judge John A. Sbarbaro said he did not want to hear any more, and without hearing any argument or making a pre-sentence investigation, he found Miller guilty and sentenced him to life imprisonment. A newspaper reporter, James McGuire, was convinced there had been a miscarriage of justice, and contacted Charles Liebman, Chairman of the ACLU Illinois Division's Committee on Police and Criminal Law.

Liebman had polygraph tests made by the State's Attorney regularly employed expert, who concluded that three alibi witnesses were telling the truth, the other two were inconclusive because of technical difficulties, and five tests of Miller led to the conclusion that he was telling the truth. The test of Mrs. Latimore was a failure, but it is understood that the expert said that no one could ever tell if she was lying or telling the truth and that she was probably insane.

Later, Mrs. Latimore was diagnosed at the Psychopathic Hospital as suffering from schizophrenia with delusions and hallucinations, and after treatment was paroled in her husband's custody, but is still under adjudication as mentally ill. However, State's Attorney Gutknecht resisted Miller's petition for a new trial which pointed out that the facts about Mrs. Latimore's insanity were unknown at the time of trial, that her insanity was such that it had existed for a long time and would

make her peculiarly subject to making false sexual charges, and that no evidence implicated Miller at all other than her identification—all matters which were never presented at Miller's trial.

Gutknecht would not state his objection to granting a new trial. Judge Sbarbaro took the position that under the law, a person convicted on the uncorroborated evidence of a woman who turned out later to be insane, her insanity being unknown at the time of trial to the court, cannot obtain a new trial on this ground to question the credibility of the witness. He conceded, however, that there might be a doubt on this point, but resolved the doubt in favor of maintaining the conviction of life imprisonment rather than grant a new trial. An appeal has been taken.

Evidence Wrongfully Obtained. Reference has been made above to the decision by the California Supreme Court outlawing the use in court of evidence obtained by illegal police action (see p. 57). The full effect of this decision on the rulings of other state courts remains to be seen.

The State of New York for a third time brought to trial and convicted Camilo W. Leyra whose death sentence on a charge of having killed his parents had twice been reversed by the higher courts (see the ACLU 1953-54 *Annual Report,* p. 61). In the first two trials the prosecution counted heavily on confessions obtained by deception, but the U.S. Supreme Court held them inadmissible; the NYCLU intervened in these prosecutions, but not in the third.

6. Mixed Problems

Mrs. Manuel Miller. The American Civil Liberties Union concluded, after an extensive investigation, that no civil liberties issues were involved in the case of Mrs. Manuel Miller of Bethel, Vt. Long known locally for her anti-Communist political opinions, Mrs. Miller gained nationwide attention after her indictment on 19 counts of violating the Selective Service Act for urging prospective inductees to evade the draft. Judged temporarily insane and ordered placed in the federal mental hospital at Washington, D.C., until she could recover sufficiently to defend herself at a trial, Mrs. Miller defied state and federal authorities who were attempting to take her into custody.

Several persons expressed the view that the case against Mrs. Miller resulted from her public expression of strong anti-Communist opinions, that her court hearings were unfair because the federal judge who presided had been attacked by her in published editorials and so should have barred himself as biased and that officials used brutal treatment in their efforts to remove her to a mental hospital. It was stated that the Union should have intervened in the case to show its concern for

the defense of anti-Communists as well as Communists. But, said the ACLU, Mrs. Miller was not indicted because of her publicly expressed views but for urging violation of the draft act in private correspondence; and "except where there is no clear and present danger of violating the Selective Service Act . . . or there is a privileged relationship. . . . The Union has never intervened in any of the prosecutions for advising violation of the draft law. The individuals involved in such cases have held different political views, and the Union's decision had not been based on their political beliefs but on the ground that counseling non-registration was a direct incitement to an illegal act."

In the Miller case, a review of the legal proceedings showed that the judge "demonstrated a genuine interest in Mrs. Miller's having a proper legal defense and endeavored to assist her. . . . (His) decision to grant the government's motion for commitment was not based on flimsy evidence, but on the expert testimony of competent psychiatrists unrebutted by any other expert testimony. With respect to Judge (Ernest W.) Gibson's alleged bias, no evidence was offered to demonstrate prejudice; on the contrary, he showed Mrs. Miller every consideration. A legal motion to disqualify Judge Gibson, which could be reviewed in higher courts, was the proper way to present this point, but this was not done.

"The execution of the court order by federal authorities was initiated without resort to force or violence. There was no effort to 'seize' Mrs. Miller. The use of tear gas (to evict the Millers from their home) came only after many long hours of defiance during which Mr. Miller allegedly threatened the authorities with physical assault."

One due process aspect of the Miller case did concern the ACLU: whether Mrs. Miller's commitment to the federal hospital in Washington, D.C., a long distance from her home, could have been changed to an institution nearer by. The Union raised this question with the Attorney General, to learn why a federal or state hospital closer to a patient's home could not be used in cases like Mrs. Miller's, and was subsequently informed that effort had been made by federal officials to have her accepted "by a proper institution in that state but the state authorities were unwilling to board her. As the only federal hospital that houses feminine mental patients is St. Elizabeth's . . it was necessary to assign Mrs. Miller to that institution."

After several weeks in St. Elizabeth's, federal doctors found that Mrs. Miller was able to assist in her own defense, and in accord with her request for a speedy trial, the trial was held in July. She was convicted.

Summary Judgment. Two members of the Socialist Labor Party were arrested in Louisville, Kentucky, while distributing leaflets and

charged with disorderly conduct. In police court their request for a trial was denied. The prosecutor stated the evidence, one of the men made a statement; the judge offered to suspend sentence if they would get out of Louisville and never return, but as this offer was being protested, they were found guilty. The ACLU is supporting a petition before the Kentucky Court of Appeals, stressing that the Louisville Police Court by refusing them a trial had denied them their right to free speech, confrontation of witnesses, counsel, and due process and equal protection of the laws under the Fourteenth Amendment and due process under Kentucky law.

The Braden Case. A major civil liberties case, also in Kentucky, involves the conviction of Carl Braden under the Kentucky sedition and criminal syndicalism law.

Carl Braden bought a house and then deeded it to a Negro. Within a short time the structure was bombed, and the state charged that Braden himself did the bombing in order to foment trouble. This case has never come to trial. But Braden was also charged with sedition; found guilty, he was sentenced to fifteen years. The ACLU at once entered the case because of numerous violations of due process and because of its belief that the law is itself unconstitutional. This latter point will presumably be decided by the U.S. Supreme Court in the Pennsylvania Nelson case.

The due process points may be summarized as follows:

1. A search warrant was issued on the basis of an affidavit by Braden's foster daughter. ACLU executive director Malin observed that this is "reminiscent of practices used by totalitarian Communist regimes in getting children to inform on their parents."

2. The indictment alleged that Braden committed one or more crimes at unspecified times and places, a violation of the Constitutional provision that a defendant must be allowed to meet factual charges.

3. The mere possession, even with intent to distribute, of Communist literature does not constitute a crime; though Braden may have been convicted for this, nearly every public library in the country would be subject to prosecution under such a law.

4. Merely to suggest the use of unlawful means to obtain a political end (as distinguished from active incitement to crime) is an exercise of free speech; to hold otherwise would be to curb constitutionally protected discussion.

5. An FBI agent testified against Braden, but the defendant's counsel was not allowed to inspect the documents on which the agent's testimony was based. The ACLU said: "No matter how reputable a witness may be, if the Government refuses to disclose the basis for his testimony the defendant is denied the essence of a fair trial."

PROCEDURE IN THE FEDERAL EXECUTIVE DEPARTMENTS

From July 1, 1954 to June 30, 1955, the period covered by this report, civil liberties questions raised by action in the federal executive departments continued to center around the security issue. Particularly in question were the federal employee security program, the granting of passports, the treatment of aliens, and the types of discharge given by the armed services.

1. The Security Program for Federal Employees

Ernest Angell Statement. The most comprehensive statement yet made by the ACLU on the government security program was embodied in the testimony of Ernest Angell, chairman of the Union's Board of Directors, before a subcommittee of the Senate Committee on Government Operations. Angell, former chairman of the U.S. Regional Loyalty Review Board for the New York area, testified this spring when the subcommittee was considering a resolution calling for the appointment of a nonpartisan commission to review the whole federal security practice. Congress later voted for such a commission and its membership has recently been announced.

Urging the substitution of the standard "unsuitable," whenever possible, Angell said: "It would seem forlorn to hope that, in an area giving so much ammunition for political warfare, the public would be convinced that discharge as a security risk carries with it no stigma, especially when the 'numbers game' is played so as to give the impression that people who resign or are dismissed for non-security reasons are Communists. . . . The only solution which would avoid public confusion and remove political considerations would seem the discharge as security risks only of those who could not be discharged for any other reason."

The civil liberties spokesman also deplored the lack of a definite requirement that accusers of employees involved in security proceedings should be identified and confrontation and cross-examination allowed. Noting that under a March, 1955, provision of the program, efforts are to be made to produce informants for cross-examination if it will not jeopardize the national security, Angell said that a person's right to cross-examine his accusers should not be dependent on whether or not the accuser wishes to testify, and that only counter-espionage agents should be exempt—and even they should be cross-examined by the security board itself. He added that the change is not especially important in view of the remaining prohibition that accusers need not be produced if national security interests dictate to the contrary.

"If there is need to keep informants secret in the interests of national

security, we also submit that national security requires that cross-examination be allowed, for at the present time, many good persons who might help our national security will not even attempt to seek federal employment when they know that they may be stigmatized as a security risk because of the statement by an anonymous informer, who may be an anonymous liar."

Angell criticized the present set-up of security review boards which are composed entirely of government employees, asserting, "It is difficult to understand how one may expect a fair impartial decision . . . , one completely free of prejudice, when the person making the decision knows that he, himself, may be investigated as a security risk, or charged with disloyalty, should he make a determination which later proves unpopular. The way to overcome the politically-motivated security officer or agency head is to return to the independent hearing and review board system . . . where private citizens, as judges sitting in appeal, had nothing to fear from political reprisals."

The ACLU noted that probationary employees and applicants for government positions have no right to a hearing in security cases.

The civil liberties organization also called for "reevaluation" of the Attorney General's list of subversive organizations, with respect to the inclusion of several groups presently included which offer no real security danger. It also pointed out that government security officers are not restricted to organizations on the Attorney General's list, but can "arbitrarily" decide that other groups are Communist or subversive. "The result has been that, on several occasions, thoroughly loyal patriotic organizations have been considered as Communist." (See above, p. 22.)

John Paton Davies, Jr. After 23 years of service as a career diplomat and eight clearances in loyalty-security hearings, John Paton Davies, Jr., was adjudged a security risk and dismissed in November 1954 by Secretary of State Dulles. The reason for this action remains largely a matter of speculation; Davies has suggested that the whole record of his case be made public but the Secretary has ruled that disclosure would not be in the public interest.

The ACLU, in a letter from Executive Director Patrick Murphy Malin, to the Secretary of State, strongly attacked the "security" stigma. Malin said that if Davies' professional evaluations were not liked, if his policy views ran counter to policy, if he lacked caution in dissent, the diplomat could have been assigned to a non-sensitive post. And, if unclassified information had been revealed by him, it hardly amounts to a substantial risk that secret matters will be exposed. This much, the letter indicated, could be said in comment on the newspaper reports.

In addition, the ACLU pointed out that the dismissal would be bound to affect the vital independence of foreign service officers as they pre-

pare their reports and recommendations. "They would have to be the most hardy of men not to fear that an independent, or even unpopular, position might, in the future, subject them to security proceedings." And Malin urged the State Department to "make emphatically clear that disagreement with authority will not be equated with security risk, and that dissent, the most cherished of our American freedoms, can still be expressed in our country, even by persons in the government service."

The Peters Case. Dr. J. P. Peters, senior medical professor at Yale, served for some years as a consultant to the U.S. Public Health Service. In 1953 the now defunct Loyalty Review Board held there was "reasonable doubt" as to Dr. Peters' loyalty, and terminated his government connection. The case reached the U.S. Supreme Court which, in June, 1955, held that no authority had been given the Board to review independently the loyalty of a government employee when he had previously been cleared by his employing agency. The court ordered the Civil Service Commission to expunge from Peters' record the charges and the Board's findings; reinstatement was not ordered because the term of service contracted for had expired.

Both the attorneys for the doctor and the government lawyers had asked the high court to determine a fundamental issue, whether government employees have a constitutional right to confront and question their accusers under oath. All concerned were disappointed at not getting a ruling on this question.

The ACLU filed a friend of the court brief in the case which embodied a "chamber of horrors" portraying the fate of government workers who have suffered at the hands of accusers later revealed as mistaken, worthless, or malignant. In addition, the Union pointed out that current security practices are disrupting and delaying the work of vital research scientists, causing them to turn to less critically needed activity, impairing federal service morale, driving out vigorous critical talent, and deterring many of our best minds from seeking government work. (See above, p. 25.)

Harry P. Cain Criticism. A member of the Federal Subversive Activities Control Board, and a former United States Senator, Harry P. Cain has in the last several months made a number of notable public addresses which offer constructive criticism of the federal security program. Holding that justice, security and freedom must be kept in balance, and that "no two can operate successfully without the other." Cain suggested: 1—reconciliation of departmental differences by a higher authority, 2—choice of security officers "who can tell the difference between disloyalty and non-conformity, between treason and heresy," 3—employment of professional hearing examiners, 4—separation of personnel and security functions in the departments, 5—modifi-

cation of the present criterion which calls for testing whether the employment of an accused is "clearly consistent with the interest of the United States" to one calling for dismissal if "employment is reasonably inconsistent with the national interest," 6—more expert and flexible tailoring of security to the particular job, and 7—clarification so that drunkards, perverts, gossipers, and keepers of bad company will not be lumped together with the actually disloyal. (See above, p. 22.)

Brown-Weinstein Study. A valuable contribution toward understanding of the problem now exists in the form of a survey of federal security regulations and practice, prepared by Professor Ralph Brown of the Yale Law School (and a member of the ACLU Board of Directors) and Sondra Weinstein, an attorney. The study was made possible by a grant from the Fund for the Republic.

The Civil Service Commission. In the fall of 1954, Patrick Murphy Malin criticized a report of the Civil Service Commission as containing "gaps in fact which afford too much opportunity for further political charges and countercharges and . . consequent confusion of a vital question which could and should be treated with statistical clarity." The report had listed 6,926 employees as separated from federal service, 2,611 dismissed and 4,315 resigned. Of the total, 1,743 were reported separated on the basis of file information showing "subversive" associations or activities.

Malin said that debate on the matter of security risks in government has revolved mainly around the need for a clear-cut definition of "subversion" and for exact measurement of whatever its extent may be. "This is essential in order to avoid conflict with the civil liberties of free speech and association, and accurately to assess the actual risk of subversion. The public needs full information to reduce the tension which arises from conflicting party statements about 'subversives in government' and damages civil liberties."

"For this reason," Malin continued, "we wish that the figures of dismissals and of resignations had each been subdivided into cases involving 'subversion' (established or alleged) and cases of other sorts. We also wish that the 'subversion' category had been subdivided into dismissals and resignations, with indication of the extent to which hearings were held. A hearing is vitally important because it affords the only reliable test of the accuracy of a 'subversive' charge leveled against a government worker."

The ACLU letter also called attention to the lack of a clear definition of "subversion" in the report. Such cases, it said, are based on files that contain derogatory information, in varying degrees, of subversive activities or associations. "But, it is not clear whether such information is raw, unevaluated data, possibly based on gossip or malicious tale-

bearing, which the employee has not had a chance to refute at a hearing; or whether it represents considered judgment on reasoned findings. The purpose of a hearing under the security program is to evaluate and judge file information, and the failure to make explicit that derogatory file information does not automatically lead to dismissal or resignation harms civil liberties by leading the public to believe that there are more established 'subversive' security risks than there actually are, thus creating an atmosphere in which more and more curbs on free speech and association will be accepted."

The Lorwin Case; Postscript. The case of Val R. Lorwin, wrongfully accused of perjury, is covered in last year's ACLU report; it was noted that the Department of Justice attorney who improperly obtained the indictment had been discharged. In July, 1954, in an appropriations committee hearing and through a letter of Attorney General Brownell to Senator William Langer, chairman of the Senate Judiciary Committee, further satisfying light was thrown on the case. It appears that from the moment the first element of suspicion about the indictment appeared, the top administrative echelon of the Department relentlessly pursued its inquiry into the full and true nature of the case. Furthermore, the Federal Bureau of Investigation frankly stated that the alleged informants against Mr. Lorwin (upon whose alleged testimony the wrongful indictment was in part based) had no competent evidence to offer. The ACLU congratulated the Department and the Bureau on their handling of this latest aspect of the case.

2. Passports

A Big Step Forward. For more than a century U.S. secretaries of state have insisted that the granting of passports is a matter of absolute discretion for the executive branch of the government. But within the past three years, and with explosive suddenness in the spring of 1955, the federal courts have profoundly modified this principle and qualified its application in the direction of greater freedom for the individual under the Constitution. The ACLU takes pride in its activity in the cases which it has presented and believes that its efforts, along with those of the Workers Defense League and other groups, have been of considerable influence. For a detailed review of the past and immediate history of the problem, readers should consult the ACLU *Washington Digest,* Vol. I, No. 5 (prepared by the Director of the ACLU Washington Office and available on request from the ACLU).

As early as 1835 the U.S. Supreme Court defined a passport as a purely political document merely certifying the citizenship of the bearer, useful for such significance as it might have abroad to U.S. consular

officers and foreign governments. Legislation and regulation in the 1920's gave the Secretary of State sole authority and unqualified discretion—which he had long claimed—to issue and deny. The 1952 Immigration Act made it a crime for a citizen to attempt to leave the country without a passport when a national emergency exists.

The ACLU has taken the position that standards used in making a determination on issuance should be in harmony with personal guarantees of liberty protected by the Constitution; the right to travel involves that freedom of the person which is established in Anglo-Saxon jurisprudence from Magna Carta to the Bill of Rights, and in countless cases. Reasonable limitations, under special circumstances may, of course, operate: 1—restriction in time of war to protect the individual or the national interest, 2—restrictions upon fugitives from justice or those seeking to avoid the jurisdiction of a court, 3—restrictions upon persons in poor physical or mental health who might in a foreign land become an obligation of our government's foreign representatives.

The ACLU has particularly objected to restrictions which affect persons going abroad who might engage in speech which is permissible in the United States. A letter to the Secretary of State noted: ". . . whatever the purpose of the trip abroad may be, however innocuous, every citizen who is a Communist must remain in the United States. It is strange indeed that in an effort to combat Communist totalitarianism we ourselves have adopted the tactics so well known behind the Iron Curtain where passports are refused to those hostile to the Communist regime."

The first break in the absolute discretion doctrine occurred in 1952 when, in the ACLU-sponsored case of Anne Bauer, a three-judge federal court ruled that the State Department would have to set forth the reasons for denial and grant a hearing according to announced and clearly defined standards. But the Union has maintained that the new regulations which followed upon the Bauer decision do not meet the court's order in these three ways: 1—there is no full guarantee that all reasons will be given, 2—there is no opportunity for confrontation and cross-examination, and 3—no standards whatsoever are laid down for persons who are *not* alleged Communists or Communist sympathizers.

The ACLU explained its position to the State Department in a letter of January, 1955, and asked for an opportunity to discuss the issues. In April, Scott McLeod, State Department Security Officer, replied saying that a conference would have no useful purpose; he elaborated upon the dangers of the world-wide Communist conspiracy (although the Union had in no way at all *urged* that Communists be granted passports). In May, the ACLU letter was publicly released and it was announced that several key test cases would be instituted.

Then, in June, a series of cases reached the point of decision by federal

appellate courts and the whole structure of controlling principle became radically modified.

Nathan and Shactman Cases. Dr. Otto Nathan had for two and a half years been attempting to get a passport; his need became pressing when he was obliged to go to Europe as executor of the will of Albert Einstein. First a federal district judge and then the Court of Appeals ordered State Department action. The appellate court went so far as to demand production of the grounds for refusal and spelled out in detail the nature and schedule of the hearing to be afforded. Confronted by this order, within a week the passport authorities granted the passport.

On June 23, 1955, the U.S. Court of Appeals for the District of Columbia, in a notable opinion by Judge Charles Fahy, attacked the broad constitutional question of substantive due process in passport matters. In ruling on the application of Max Shactman, denied a passport as head of the Independent Socialist League, the court took a long look at the facts. Shactman pointed out that for six and a half years he had been attempting to get a hearing by the Attorney General in order to challenge that official's listing of the ISL as both subversive and Communist. At a hearing before the passport authorities he apparently convinced them that his group was actually anti-Communist and not part of an international conspiracy, but the passport was still denied because of the listing. The court therefore addressed itself to the question whether this fact constituted a sufficient basis for refusing a passport, particularly in the light of Shactman's unanswered rebuttal. The court thereupon decided that although the Secretary of State might refuse, he could not, as in this case, do so arbitrarily: "Discretionary power does not carry with it the right to its arbitrary exercise."

The ACLU hailed the decision, particularly the court's ruling that a passport is an essential document related to a citizen's right to travel and not only a factor in our foreign relations; the court, it said, has upheld the personal guarantees of liberty that our Constitution provides.

Other Cases; Further Action Needed. By the end of July several other long-delayed or previously refused passports had been granted. Mrs. Ruth H. Maxfield, who had been denied both the document and the reasons for its refusal, was successful. George W. Shepherd, Jr., had sought to go to Africa as the employed manager of a farmers' association. Although the British authorities had no objection, the U.S. refused a passport because he had "engaged in political affairs." Two years' wait now brought him his passport. These were ACLU test cases.

However, the ACLU was still obliged this summer to urge the State Department to announce new regulations harmonious with the recent court decisions; lacking such regulations, the Passport Division ap-

parently functions under the old rules, often with inordinate slowness. It is essential that the State Department itself formally recognize what the courts have made crystal clear—that the right to travel is fundamental to our democratic concept of freedom of movement.

3. Aliens

Modification of the 1952 Immigration and Nationality Act. The chief current effort to improve the existing immigration law is embodied in identical bills presented by Senator Herbert Lehman and twelve other Senators, and Representative Emmanuel Celler and ten of his colleagues. The aspects of the existing law and proposed legislation which concern civil liberties were reported on to the ACLU Board of Directors in June, 1955, by Edward J. Ennis, a vice-chairman of the Board and an expert in immigration law. Ennis recommended and the Board endorsed the following Union position:

1. Support of the proposed statutory Board of Visa and Immigration Appeals, an independent body to be appointed by the President with the consent of the Senate, to hear appeals. (The present appellate procedure has no statutory base and there is no provision for visa appeals.)

2. Support of the proposal that hearings shall be conducted by independent examiners not subject to supervision by superiors in the Immigration Service.

3. General support of the right to judicial review.

4. Support of the change which would permit bail in immigration proceedings where national health and security are not involved.

5. In the large area of quota principle and application (much of which does not raise a civil liberties question), particular support for that change which would introduce Asylum Preference of 15% to 25%, offering entry to persons threatened with oppression or persecution because of race, national origin, color, religion, adherence to democratic beliefs, or opposition to totalitarianism or dictatorship.

6. Support of changes which would establish a statute of limitations on the adverse force of a conviction and which would substitute clearer standards for present possible exclusion of a person whose entry would be "prejudicial to the public interest."

7. Support of a proposed statute of limitations on deportation, in the light of recent Supreme Court decisions that past acts may be a ground for deportation although those acts were not illegal when done.

8. Support of a change which would eliminate the revocation provision (for living abroad, or joining organizations, membership in which would have been a ground for original denial, or conviction of contempt of Congress for refusal to answer legislative committees about subversive activities) which applies to naturalized citizens but not to

native-born, and a change which would establish a statute of limitations on fraudulent or illegal procurement of citizenship.

Jailing of Detained Aliens. In December, 1954, the Union and others, including Vice-chairman Pearl Buck of the ACLU National Committee, protested vigorously the government practice of placing aliens under detention in federal jails. It was discovered that more than 45 aliens, not eligible for parole while their cases were being processed, had been so lodged, presumably to save money. Patrick Murphy Malin, ACLU Executive Director, protested that "government economy is no excuse for treating as criminal people who have not been sentenced in a court of law for a crime, and subjecting them to the indignities of prison life." The Immigration Service stated that it was correcting this procedure but in August, 1955, the ACLU again was impelled to protest the holding in jail of persons not under sentence—in this instance persons with a record of past convictions or an individual described as an "agitator."

Prejudgment. Last year's *Report* told of the Supreme Court's reversal and remanding in the Acardi case, where a Department of Justice press release had unfavorably characterized an alien who was to have a hearing on deportation. Later court proceedings found as a matter of fact that there was no evidence of the release's having affected the hearing officers. In 1955, the U.S. Supreme Court by a 5-3 decision refused to stay the deportation of one Marcello (convicted of narcotic law violation in 1938) in a similar case.

Aliens and Communism. The virtually unlimited range of Congressional authority over aliens—short of depriving them of *habeas corpus* petition—has particularly borne down on those with any Communist taint. For example, David Tullman, who arrived in this country fifty years ago as a baby, is still technically an alien because his parents were never naturalized. In the course of a free-wheeling, individualistic career, Tullman held membership in the Communist Party for three months in 1933. Arrested in December, 1952, he was at once ordered deported. Fortunately, even the minimum protection offered for the first time by the then new McCarran-Walter Act, operated to save him; he was found eligible for suspension of deportation upon proof of ten years of good moral behavior and determination of other facts.

David Hyun, Los Angeles architect, was ordered deported to Korea in 1954, on the basis of alleged 1945 membership in the Communist Party. He has appealed to the Supreme Court on the ground that the evidence against him was submitted in Hawaii and that he could not confront nor cross-examine his accusers. Southern California ACLU entered the case on the bail issue.

Supervised Parole. The U.S. Supreme Court currently has under consideration the problem of eleven persons ordered deported as Communists whose countries of origin have refused to accept them. These "stateless persons" are required to report at fixed intervals to give information about their circumstances, habits, and associations, and to submit to restrictions on their conduct and their activities. In a related action, three persons out on bail after conviction under the Smith Act, protest the same supervision. The group sees itself as the victim of a continuing "administrative tyranny."

Chinese Students. The problem of Chinese students wishing to return to the People's Republic, but denied exit visas because of their supposed useful technical knowledge, eventually involved about 75 persons. It became a diplomatic and political issue because of its coincidence with the problem of getting back American military personnel and civilians held in Communist China, but the constitutional question of right of departure was never developed because of partial working out of the international problem. However, ACLU affiliates in Northern and Southern California, Illinois and New York did effective work with respect to due process in preliminary phases of administrative action.

Regrettably, after the general detainer was lifted, the Immigration Service in several instances ordered rapid departure of students who had been here for some years, and some of whom were seeking entry visas to countries other than China. When they did not get out fast enough, some of them were arrested and held for deportation.

4. Army Discharges

The Army apparently makes a practice of issuing discharges of derogatory quality for reasons totally unconnected with the quality of the performance rendered while in military service. Last year's ACLU *Report* noted the case of Barry Miller who was given an "undesirable discharge"; later he was given a general discharge "under honorable conditions," but not the "honorable discharge" he feels he is entitled to. This case is still awaiting decision in a federal District Court.

It was hoped that the Miller case was a solitary mistake but the spring of 1955 brought a number of similar instances to the attention of the ACLU and its affiliates. The leading ACLU test case, sponsored by the New York CLU, is that of John Henry Harmon, III, given an undesirable discharge based on derogatory information; Harmon was alleged to have been employed by the Detroit Urban League ("reported to be a subversive organization"), to have registered as a voter in the American Labor Party, and to have been employed at a "Communist-operated" summer camp. All of these alleged connections, if true,

preceded his induction. Furthermore, the soldier was discharged without a hearing, thereby not receiving even the minimum safeguards provided for federal employees.

The NYCLU asked that the Army review board take jurisdiction and grant an honorable discharge. It called the action taken a violation of the constitutional guarantees of free speech and due process, and said "there can be no question but that an undesirable discharge . . is penal in nature, for one who is so discharged is denied mustering-out pay and veterans preference in federal employment."

PROCEDURE IN LEGISLATIVE HEARINGS

1. Progress in Revision of the Rules

The history of ACLU interest in rules governing Congressional investigating committees, and a discussion of the proposals of Senator Kefauver and 18 other Senators, is set forth in the 1953-54 *Report* of the Union. Support for improved rules also came, in 1954, from the governing board of the American Bar Association. The ABA recommendations were generally similar to other plans for improvement but varied on three important points: 1—while "persons named" adversely in hearings should have the right to testify or submit a statement, it is not suggested that they have the right to confront witnesses or to cross-examine, 2—no suggestion is offered that witnesses be given advance notice, 3—but, going beyond the ACLU and Kefauver suggestions, it is recommended that only the whole committee shall issue subpoenas.

Senate Subcommittee on Rules. The Senate Subcommittee on Rules (Senators Jenner, Hayden and Carlson) between June and August, 1954, held sixteen public hearings and heard 55 witnesses. In its report, the subcommittee made, or refrained from making, the following chief points:

Favorable to civil liberties.

1. A majority vote of the whole committee should be required to establish a subcommittee.
2. There should be no release of executive session testimony except by whole committee vote.
3. Witnesses should be informed in advance of the matters on which they will be questioned.

Unfavorable to civil liberties.

1. The subpoena power could be delegated to any member.

2. A quorum would not be required for several important actions.
3. A majority vote would not be required before a preliminary inquiry.
4. Witnesses would not be given an opportunity to make a full answer.
5. One-man hearings would not be prohibited.
6. There would be no provision for an intra-Senate rules enforcement tribunal.

Mixed civil liberties value.

1. A witness might inspect the transcript, or purchase it—but at his expense.
2. "Persons named" might testify or submit a statement, but at the discretion of the committee.

The Senate took no action on this report of its subcommittee.

Other Senate Action. However, important action was taken by two important standing committees of the Senate. The Senate Judiciary Committee voted that at least two Senators be present for all taking of testimony, except that concerning private claims; if a one-man hearing is to be held, it must be authorized by a two-thirds vote of a subcommittee. The Senate Permanent Subcommittee on Investigations imposed upon itself these rules: 1—"persons named" may testify or file a statement, 2—release of derogatory testimony taken in executive session is to be only by majority vote of the whole committee, 3—witnesses have a right to counsel at both executive and public sessions, 4—no "surprise" hearings are to be held outside of Washington, 5—witnesses statements must go in the record if submitted 24 hours in advance.

For a full analysis of the Senate investigative regulations outlined above, see the ACLU *Washington Digest,* No. 1 (January, 1955). See also last year's ACLU *Report,* pp. 72-4.

The House of Representatives. In March, 1955, the House adopted a resolution proposed by Representative Doyle which, if applied to all the House's committees, would: 1—end one-man hearings; 2—inform witnesses in advance of the area to be covered, 3—provide witnesses with rules of procedure and permit counsel, 4—take testimony first in executive session, 5—allow "persons named" to testify, 6—release executive session testimony only by whole committee consent, 7—make transcripts available, at the expense of the witness purchasing. The resolution did not embody the ACLU recommendation that accusatory witnesses be subject to confrontation and cross-examination, but the Union backed the resolution as a step forward.

2. The Watkins Committee

Immediately prior to the hearings conducted by the Senate Watkins Committee on Senator McCarthy, the ACLU urged that witnesses before the committee be allowed to cross-examine adverse witnesses and that the hearings be given radio-TV coverage. The Committee adopted the cross-examination principle, but refused access to the airwaves.

On radio-TV coverage, the ACLU pointed out that its objection to the broadcasting or televising of legislative investigative hearings had always been conditional, and based on the fact that inadequate procedural safeguard was the unfortunate general practice. But the Watkins committee, by announcing that the hearings would be held under court rules of procedure, had met this condition; therefore, said Executive Director Malin in his telegram to Senator Arthur V. Watkins, "the rights of the First Amendment should be accorded to mass media of communication on an equal basis . . . [otherwise] the public's right to see and hear these important hearings cannot be fully met. . ."

After the Committee had made its report and recommendations, the ACLU, over the signatures of Malin and Board Chairman Angell, sent a letter to nine leading American newspapers, commenting as follows on the categories established in the report:

Category I. Incidents of contempt of the Senate or a Senate Committee; not within the scope of the Union.

Category IV. Incidents of abuse of Senatorial colleagues; not within the scope of the Union.

Category V. Senator McCarthy's treatment of Brigadier General Zwicker. The ACLU applauded the Watkins Committee for saying three things: 1—". . . the very fact that 'exercise of good taste and good judgment' must be entrusted to those who conduct such [Senate committee] investigations places upon them the responsibility of upholding the honor of the Senate." 2—"We do not think that [the conduct of Senator McCarthy toward General Zwicker] would have been proper in the case of any witness, whether a general or a private citizen . . .", and 3—" . . for this conduct [Senator McCarthy] should be censured by the Senate."

Categories II and III. Incidents of encouragement of government employees to violate the law and unauthorized use of confidential information from executive files. The Union welcomed these two conclusions by the Committee: 1—". . . the conduct of Senator McCarthy in inviting Federal employees to supply him with information, without expressly excluding therefrom classified documents, tends to create a disruption of the orderly and constitutional functioning of the executive and legislative branches of the Government, which tends to bring both into disrepute." 2—". . the leadership of the Senate [should] en-

deavor to arrange a meeting of the chairmen and the ranking minority members of the standing committees of the Senate with responsible departmental heads in the executive branch of the Government in an effort to clarify the mechanisms for obtaining such restricted information as Senate committees would find helpful in carrying out their duly authorized functions and responsibilities."

The ACLU believes that more is at stake here than even the balance of power between the executive and the legislative branches of our government. For example, the individual liberty of the citizens of our free society depends in great measure on preventing the disclosure of personal information from investigative files, except under the due process safeguards of fair court trial or administrative hearing.

At this time the ACLU also stated its belief that the Watkins Committee, charged with examining the conduct of a Senator, had scrupulously avoided doing or saying anything that would curb the free-speech right of an elected representative of the people. On the particular claim by McCarthy that only the Chairman of the Committee had heard the Senate Parliamentarian, and without giving the Senator opportunity to cross-examine, the ACLU Due Process Committee held: 1—that the witness being heard was giving purely expert testimony and the one person affected was present (in the person of his counsel), and 2—opportunity to cross-examine was later afforded.

When the Senate assembled for final action, the ACLU urged censure of McCarthy on the evidence under Categories II and III and V of the Watkins report, but advised against additional censure on the newly-offered ground that he had again been contemptuous in attacking the Watkins report and the committee which wrote it. The ACLU felt that a further censure would confuse the issue, establish a bad precedent for free speech, and single out the Senator's latest language for first application of a higher standard.

3. Cases of Abuse

The wide and serious concern with the improvement of procedure in legislative investigations has naturally been matched by a decrease in the number of abuses. But the Union continues to watch the scene with care and to protest in significant cases.

At the height of the McCarthy furor, two of the investigators serving his committee were revealed as having been refused security clearances by the Department of Defense without hearing. In a protest sent by Patrick Murphy Malin to Defense Secretary Charles E. Wilson, it was acknowledged that Senate committee employees had no statutory right to a hearing on security clearances, but strongly contended that the civil liberties principle of due process required that a man be given

a chance to face charges and establish the truth. The wrong was compounded by the fact that what charges existed were not specific.

The ACLU defense of Senator McCarthy's employees held no meaning for the Senator himself. In testifying before the Senate Rules Subcommittee, McCarthy accused Judge Dorothy Kenyon, an ACLU Board member, of having been a Communist Party member, "according to the testimony of two very reliable former members. . . ." Ernest Angell, ACLU Board chairman, immediately wrote Chairman Jenner of the Rules Committee, strongly defending his fellow director. He said: "This is exactly the kind of reckless accusation which has marked far too many Congressional investigations." He pointed out that Miss Kenyon had no knowledge of the fact that such a charge was to be made, no opportunity to answer, and no witness to confront. He repeated the Union's expression of admiration and confidence for Judge Kenyon, released at the time of McCarthy's earlier attack on her in 1950.

Problems of the procedure used by investigating committees are not confined to the area of national security. The ACLU found occasion to attack one-man hearings conducted by Senator Prescott Bush who was looking into Federal Housing Administration scandals. In March, 1955, the Senate Banking and Currency Committee, under the chairmanship of Senator J. William Fulbright, opened up a line of questioning which led a witness to state that Walter Winchell, through his "tips" was responsible for stock market speculation. Executive Director Malin urged that Winchell be allowed to testify and defend himself against this charge.

A late 1954 report of the House Un-American Activities Committee charged that "neo-Fascist" and "hate" groups were breeding subversion in the United States, but the groups named and attacked were given no opportunity to defend themselves. The ACLU pointed out that procedure of this kind violated the rules which the Committee had promulgated for its own conduct in 1953. Furthermore, it was emphasized that the Committee was attacking propaganda and expression of opinion, a very different matter to subversive activity.

4. The 1954 Immunity Law

In 1954, the ACLU, through the testimony of its Washington Office Director, presented its opposition to a bill which offered witnesses immunity from prosecution which might derive from answers to legislative investigating committees. This immunity, in such situations, would take the place of the protection afforded by the privilege against self-incrimination. The bill became law; it will receive its first test in the Ullman case, now before the Supreme Court.

The Union objected on three grounds: 1—the legislation does not

make clear whether the immunity extends to prosecutions in state courts, 2—the legislation is unwise because it is questionable whether any really important information has been denied to investigating committees, and 3—Congress has failed to consider the value of earlier court decisions which protected against degradation as well as self-incrimination; the waiver would force a person to reveal his private beliefs and opinions and to denounce himself.



"RULES OF THE ROAD" Fitzpatrick in the St. Louis Post-Dispatch

Part III. EQUALITY BEFORE THE LAW

The opinion of {May 17, 1954 declared that} . . . racial discrimination in public education is unconstitutional . . . There remains for consideration the manner in which relief is to be accorded. . . .

At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a non-discriminatory basis. . . .

. . . the courts will require that the defendants make a prompt and reasonable start toward full compliance. . . . Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good-faith compliance at the earliest practicable date.

Chief Justice Warren for the unanimous Court in the Desegregation Cases, June 1, 1955.

Equality before the law, in this country at this time, is preponderantly a matter of non-discrimination with respect to Negroes, but the principles at stake govern the treatment of other races, national origin groups, the sexes, adherence to different faiths, and the non-religious. This must be remembered because although there are different victims of discrimination at different crises in history, the fundamental value remains unchanged—equality before the law.

RACE, NATIONAL ORIGIN, COLOR, CREED

The U.S. Supreme Court has spoken, twice. The executive branch of the government has acted, with general success in the integration of the armed forces, and with great success in the sphere of government contracts. But Congress, as has been pointed out by the National Association for the Advancement of Colored People, has done nothing. The political situation, the complexities of Democratic and Republican party solidarity, continue to paralyze any move toward significant federal civil rights legislation. The progress in legislation which has been made has been at the state level—in those states which understand and support the Constitutional guarantee of equality.

1. Education

When the U.S. Supreme Court handed down its "implementing" decision of June 1, 1955, in the desegregation cases, some public dis-

satisfaction was expressed with the reasonable time standard to be applied. But the language of the Court means what it means: *first*, a prompt start; *then*, eventual "full compliance," and no delay not resting upon valid reasons—reasons which those who seek delay must supply.

In 1954 twenty-one states had some kind of segregation law and practice in public education. In responding to the Court's decision, some, such as West Virginia, clearly intend to comply quickly and completely. Others, like Tennessee, are undertaking to implement integration regularly but slowly, each year "stepping down one year" until the whole school system is covered. The public officials of Georgia, Louisiana, Mississippi and South Carolina express complete intransigeance or busy themselves with evasive legislation. There are important variations within many of the states. A comprehensive view and explanation would embrace the whole political and social psychology of the South, but a sampling of typical situations will throw some light on the problem.

Gains. In West Virginia a group of parents threatened resistance to the new state law ending segregation. Judge J. Harper Meredith of the West Virginia Circuit issued an injunction, saying: "Such a rebellion as this cannot be tolerated . . . in this case the state is being attacked by a group of citizens . . . they are attempting to wreck a function of the government. If necessary I will fill the jails until their feet are sticking out of the windows." That ended it.

In Tennessee, bills passed the legislature maintaining segregation in two counties, but were vetoed; the veto was not overridden. Governor Frank G. Clement said their only possible effect would be to "foment hatred and disorder where none exists."

El Paso in January, 1955, became the first Texas city to vote an end to segregation; the changeover was ordered completed by the fall of this year. In San Antonio, Roman Catholic authorities ordered an end to separate colored parochial schools. The Gainesville, Georgia Ministerial Association protested the plan to turn the public schools over to private hands in order to defeat the Supreme Court's mandate.

Less Happy News. Those who most violently opposed the end of segregation in public education propose the following tactics: 1—if necessary, end the public school system (Georgia, Mississippi, South Carolina), 2—punish those who in any way cooperate in or advocate desegregation (Georgia), 3—avoid the race issue and adopt new (segregative) laws under the general police power governing safety and order (Louisiana). In Louisiana there are danger signs of a "white supremacy" movement. It seems likely that in the worst trouble spots some time will elapse before responsible Southern decency, culture and wisdom gets the upper hand.

In Mt. Dora, Florida, a sheriff ordered the children of a newly-resident family evicted from an all-white school, reportedly because he did not "like the nose" of a thirteen-year-old girl. The family had always lived as members of the white community in South Carolina. A special investigator appointed by the Governor got nowhere; the Federal Bureau of Investigation is currently studying the case; in the meantime the family has fled Mt. Dora.

In New York City, Professor Kenneth B. Clark, NYCLU Board member, charged that city public education authorities practiced a kind of Jim Crow by concentrating Negroes in specific schools; and that once there Negroes got a clearly inferior brand of education. The seriousness of the charges led the Board of Education to ask an outside agency to investigate; a November report found no overt gerrymandering, but some evidence of "white parents" seeking to send their children to schools with smaller Negro and Puerto Rican population, and unquestionably poorer educational service in the preponderantly "colored" and Puerto Rican schools.

Fraternities. The National Committee on Fraternities in Education, surveying 125 institutions, finds that 80% of the students and presidents oppose racial and religious discrimination in fraternities and sororities, but 75% of the colleges have done nothing to decrease such discrimination. The survey blamed "powerful alumni forces" and warned that the effect on American youth is unhealthy and dangerous. The law, fortunately, seems clear for public institutions; the U.S. Supreme Court has held that the New York State University ban on discriminatory social groups did not violate due process.

Federal Aid to Education. In the spring of this year, ACLU Executive Director Malin wrote to Secretary of Health, Education and Welfare Oveta C. Hobby and to Senator Lister Hill, urging that any legislation providing federal money to education should include a clear-cut provision barring funds to school systems which oppose the Supreme Court's ban on segregation. Later, when the Ford Foundation announced a gift of fifty million dollars to American colleges, a similar restriction was requested on the allocation of the money—and it was also suggested that money should not go to institutions which fail to observe academic freedom or violate the principle of separation between church and state.

2. The Job

Government Contracts. The special Committee concerned with discrimination in government contract work, under the chairmanship of Vice-President Nixon, continues its active surveillance of all contractors doing business with the government. There is general agree-

ment that this device for control, which engages both the official and personal interest of President Eisenhower, has been unusually successful both in direct application and as a standard for all business.

Wetback Roundup. Illinois Division of the ACLU learned in the summer of 1954 that a drive was under way to round up some 20,000 Mexicans in the Chicago area who were alleged to have entered the country illegally. The Union alerted three hundred lawyers throughout Illinois asking that they be on the watch for possible civil liberties violations. Illinois also met with local immigration officials with a view to working out a program. Cooperating attorneys of Southern California ACLU have also watched the situation in their state.

FEP and Related Legislation. Minnesota and Michigan in 1955 became the ninth and tenth states to establish fully enforceable fair employment practice legislation, the first states so to legislate since 1949 (although Alaska joined the FEP ranks in 1953). California, Colorado, Connecticut, Iowa and Massachusetts strengthened existing laws or moved forward. California, Delaware, Illinois, Iowa, Missouri, New Hampshire, Ohio and West Virginia took no action, or unfavorable action, on FEP bills. When the Missouri bill came before the state House of Representatives, the vote was 47 in favor, 12 against, 60 absent, and 37 present but not voting.

Nearly all of the 22 ACLU affiliate groups were active in support of local or state FEP legislation. By testimony before legislative committees, by public statements and letters to public leaders and the press, and by intervention in specific cases, the ACLU has made known its conviction that this country must not permit unequal treatment of American workers.

Hamtramck, Michigan and St. Paul, Minnesota have become the 34th and 35th cities to adopt FEP ordinances.

Discrimination and "Discretion." In 1954, California Attorney Edmund G. Brown ruled on the controversial issue of Los Angeles and Oakland firemen; the NAACP had charged that segregation was widely practiced in assigning men to units. Brown said: "Public officials must act within the limits set by the non-discrimination principles of the California Constitution. . . . Where, over a long period of time, there appears a systematic exclusion of members of a certain race from the opportunity and privileges accorded to others similarly situated, the courts will conclude that the action is attributable to racial discrimination rather than to the lawful exercise of discretionary authority." Last reports indicate that the conditions complained of still exist.

Around the Country. Good and bad practices in discrimination are by no means classifiable geographically. For example: 1—at the

biennial convention of the American Nurses Association, it was disclosed that the Georgia Nurses Association is the only state group which still bars Negroes from membership; 2—the southern plants of the International Harvester Company maintain the company's national policy of fair employment policy, and this brought them a 1954 award for "industrial statesmanship" from the National Urban League; 3—the FBI investigated charges that a young mother and her nine-month-old baby were being held in peonage in Mississippi; 4—Monsanto, one of the nation's largest chemical firms, has been found guilty by the Massachusetts Commission Against Discrimination of discriminating against its Negro employees in by-passing them when making promotions to supervisory positions; 5—the NAACP has announced that it will attack wage differentials based on race, over the whole United States; 6—in Pennsylvania, Alva Fulwood refused to join a Jim Crow union, but his employer, the Pennsylvania Railroad, has agreed to keep him despite its union-shop agreement with the Railway Brotherhood; this was a Philadelphia ACLU case.

3. Public Accommodations

Legislative Action. Florida enacted a law providing fines and imprisonment for persons who by their advertising indicate that any person is not acceptable or welcome in a place of public accommodation because of his religion. Illinois will henceforth deprive hospitals of their tax-exemption status if they deny admission or use of their facilities to any person because of race, color, or creed. Montana and New Mexico enacted anti-discrimination laws without enforcement provisions; complainants will have to bring action under general law. Kansas, Missouri and New Hampshire considered, but failed to pass, legislation of this kind.

Philadelphia Pools and Rinks. The lengthy and multiform legal actions conducted by the Greater Philadelphia ACLU in its test cases involving discrimination in rinks and pools came to successful conclusions in 1954 and 1955. One rink agreed to end its "membership card" practice, and another did not appear to contest the charges laid before the city commission. The Boulevard Pools case went to the Pennsylvania Supreme Court which upheld the classification of the enterprise as a place of public accommodation made by a lower court; the proprietors had been fined $100 for criminal contempt.

Other Pools and Rinks. The Castle Hill Beach Club in New York City claimed to be a strictly private group not under the jurisdiction of the state anti-discrimination law. But a state commission found, as a matter of fact, that the facilities had been operated for many years as a

public enterprise and that no major change had taken place under the present lessee; also, the "membership" consisted of 13,000 persons. Kansas City decided to re-open the Swope Swimming Pool on a non-segregated basis after it had been closed for two years because of a court decision ordering the admittance of Negroes.

In Cincinnati, a Negro woman was refused admission to Coney Island Park. The defendant proprietors said the refusal was because of her membership in the NAACP and the Cincinnati Council on Human Relations, and not because of her color. A Common Pleas Court ruled that the place was a public accommodation and that its leasing to private organizations did not give them the right to exclude members of a particular group.

The Japanese American Citizens League is seeking to have rescinded a rule barring Nisei golfers from tournaments requiring handicaps recognized by the U.S. Golf Association. JACL contends that such "arbitrary bans as the slant of eyes or color of skin deny the fundamental spirit of sportsdom."

U. S. Supreme Court. In November, 1955, the nation's highest court ruled against segregation in public parks and at public beaches (a Maryland case), and on public golf links (Georgia). In the latter case a lower federal court had ordered separate but equal facilities.

Interstate Transportation. Railroads and stations operated in interstate commerce should no longer be allowed to practice segregation, according to an examiner for the Interstate Commerce Commission. The official, Howard Homer, cited both a brief from the U.S. Attorney General and the ICC Act itself in making his recommendation. The Justice Department had asserted: "The time has come for [the ICC] . . . to declare unequivocally that a Negro passenger is free to travel the length and breadth of this country in the same manner as any other passenger. . . . It is the policy of the Federal Government, within the limits of the power vested in it, to put an end to racial segregation. . . . Just as our Constitution is color-blind, and neither knows nor tolerates classes among citizens, so too is the Interstate Commerce Act. That law forbids rail carriers "to subject any particular person . . . to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." The ICC official's statement was made in connection with a complaint pending before the ICC charging discrimination against 11 railroads and the Richmond Terminal Railway Company; the complaint was filed by the NAACP and twenty individuals.

In another case, ICC Examiner Isadore Freidson opposed the complaint of a Negro woman who charged she was subjected to discrimination on a North Carolina bus. Freidson claimed that the Supreme Court decision in the public schools segregation case did not affect a private

firm such as a carrier engaged in transporting passengers and that no Federal law or Constitutional provision prevented "reasonable segregation" in interstate commerce. His ruling drew a rebuke from ICC Chairman Richard F. Mitchell, who said he could not understand how the examiner "arrived at the conclusion he did."

The ACLU has given unqualified support to a bill in the House of Representatives barring segregation in buses and railroads engaged in interstate commerce. In 1954, the Union filed a statement with the House Interstate and Foreign Commerce Committee endorsing the bill introduced by Rep. John Heselton of Massachusetts, which would allow persons denied such equal treatment to bring civil suits for damages in the federal courts. Asserting that the Supreme Court decision prohibiting segregation in the schools paves the way for Congressional action striking further at discrimination, the ACLU said: "The ACLU believes that not only should any government-established segregation or discrimination be struck down as a violation of the equal protection of the laws guaranteed by our Constitution, but that any manifestation of segregation or discrimination by a quasi-public agency such as a common carrier must, and should, be ended by legislative action." As an additional reason for following up the Supreme Court's anti-segregation decision with federal legislation to outlaw other kinds of discrimination, the Union said it would be an effective way of stopping Communist propaganda arguments that segregation is rampant in the United States.

Southern California ACLU has filed a friend of the court brief on behalf of the civil rights of I. H. Spears, a Negro bus traveler, who bought a ticket in Los Angeles from the Transcontinental Bus System; when he got to the Midwest he was "Jim Crowed" by the Continental Southern Bus System, a subsidiary of the Transcontinental. The brief said: "It is time for the courts of this country to declare in clear and unmistakable terms that a Negro has the same rights as any person of the white race while travelling interstate."

4. The Home

State Housing Laws. Two new laws, under bipartisan sponsorship, give New York leadership in anti-discrimination action on the housing front. One law extends the jurisdiction of the State Commission Against Discrimination to include complaints involving publicly-assisted housing; the other bars discrimination in multiple dwellings, or projects of ten or more homes, which are publicly-assisted or receive any kind of mortgage insurance or loan guarantees. The mortgage and loan provisions represent the first action of this kind by any state. State action followed earlier similar action by New York City.

Connecticut law now permits the State Commission on Civil Rights to issue its own complaints in situations involving public housing, without complaint by an aggrieved party. New Jersey has legislated against discrimination in the interest rates or duration of mortgage loans. The New Jersey Division Against Discrimination now also has power to enforce existing law in its area without court action in each specific case.

The Bad Federal Record. In the spring of 1955, eighteen national, civic, religious, labor, veterans, and educational leaders strongly urged President Eisenhower to bar segregation immediately from all federally-assisted housing programs to prevent use of federal housing money to evade the Supreme Court's decision for public school desegregation. They also charged that "some opponents of school integration have frankly stated that they hope to achieve their ends by using federal housing aids to set up ghettos on a large scale."

The plea to the President was sent by the National Committee Against Discrimination in Housing and signed by the eighteen leaders including the Committee's chairman, Dr. Robert C. Weaver; Walter Reuther, president of the United Automobile Workers, CIO; Irving M. Engel, president of the American Jewish Committee; Bill Mauldin, chairman of the American Veterans Committee; Patrick Murphy Malin, executive director, ACLU; Lester B. Granger, executive director, National Urban League; and Roy Wilkins, administrator, National Association for the Advancement of Colored People.

The signers charged that the Federal Government continues to grant funds to local housing authorities for the construction of segregated housing, and that urban renewal and redevelopment projects, supported by federal funds, still receive federal approval although minority families are excluded. This, the letter added, has resulted in forcing minority families out of whole sections of a city. They also charged that the FHA and the Veterans Administration are underwriting housing developments which have qualified the applicants solely on grounds of color. It was also pointed out that the device of using federal funds to by-pass the U.S. Supreme Court decision on public school desegregation "is a plan to use Federal funds to finance nullification of the Constitution."

5. Jurors, Voters, Candidates for Office and Marriage, Motorists and Funmakers

Mexicans and Jury Service. The Supreme Court in a unanimous decision in 1954 invalidated the conviction of Pete Hernandez, charged with murder in Texas. The Court held that systematic exclusion of Mexicans from grand and trial juries violates the equal protection clause

of the Fourteenth Amendment. Five Texas jury commissioners testified that they had never discriminated. But Chief Justice Warren, in the Court's opinion, noted that, although six to fourteen per cent of the population was of Mexican descent, no member of this group had ever served on a jury; "It taxes our credulity to say that mere chance resulted in there being no members of this class among the over six thousand jurors called in the past 25 years."

Voters and Candidates for Office. A new Nebraska law removes all reference to color on the register of voters. California now provides absentee ballots for voters who, for religious reasons, cannot attend the polls on election day. A federal district judge ruled that it does not violate constitutional rights to require, under Oklahoma law, that a Negro candidate be so identified on a ballot, but the U.S. Supreme Court ruled otherwise.

Miscegenation Laws. Twenty-six states have miscegenation laws, barring marriage between whites and members of other races. Under these laws, such marriages are void, and in many jurisdictions the persons involved are punishable by long prison terms. A bill to repeal the Nebraska law was defeated in committee. Contrariwise, North Dakota in 1955 repealed its miscegenation law.

Motor Vehicle Insurance. A 1955 California law penalizes insurance companies which discriminate on grounds of race or color against applicants for liability insurance. The penalty comprises $100 damages, attorney's fees, and any additional sums expended by the applicant in getting insurance elsewhere.

"40 and 8." The semi-autonomous "40 and 8" fun-making group in the American Legion bars Negroes from membership. The matter came before the 1955 national Legion convention, and the committee with jurisdiction voted 20-1 to take no action. The ACLU notes with interest that this demonstration of disregard for the spirit of civil liberties occurred at the same convention which voted—for the fourth year running—to ask the government to investigate the American Civil Liberties Union.

6. Violence

Desegregation in the Schools. Even in those areas where there is a very strong opposition to the mandate of the Supreme Court, there has not been, quantitatively, much violence. However, this apparently propitious sign may mean only that the forces of prejudice have made threats which paralyze all opposition; where, for the moment, tyranny is in complete control there is no trouble. But in revealed trouble spots,

such as Milford, Delaware, action has been taken. Early in October, when Milford and some other places saw parents' strikes, mass meetings, picketing, and intimidation, Patrick Murphy Malin wired Attorney General Brownell asking that the Department indicate its determination to investigate possible violations of the federal Civil Rights Laws.

Trumbull Park and Oak Park. Although no dramatic further incidents have occurred in Chicago's Trumbull Park housing project, bitterness and sporadic minor violence still control the scene. Illinois Division of the ACLU continues its patient and arduous program of education, conciliation, and protective intervention in specific cases. In Oak Park, Dr. Percy Julian, distinguished Negro scientist and member of the ACLU National Committee, is still subject to the pressure which has been applied since 1951; last year he turned over to the police an anonymous letter threatening the safety of his three children; Julian remains determined to keep his home in the "white" community.

Norfolk Suburbs and Mississippi Banks. The purchase of homes by Negroes in a formerly all-white suburb of Norfolk, Virginia, has been followed by vandalism, a fire and dynamite explosions.

Less bloody, but no less cruel, force has been disclosed through the appeal of the NAACP to President Eisenhower for action against "the undisguised economic intimidation" of Negro businessmen, farmers and homeowners in Mississippi by certain white bankers, merchants and lending agencies. The NAACP reported that "state banks and other private credit institutions are conspiring to put the squeeze on [Negroes] . . active in the NAACP by foreclosing their mortgages, demanding full and prompt payment of indebtedness and refusing credit." The organization has itself moved to ameliorate the pressure by building up the resources of the Negro-owned Tri-State Bank of Memphis, Tennessee, which will serve as a source of commercial money, on sound business principles, for those harassed in Mississippi.

The Mississippi Murders. Within a few months' time a Negro minister, a Negro voter, and a Negro boy of fourteen have been murdered in Mississippi. There have been no arrests in the first two cases. The death of the boy, Emmet Till, led to an indictment and trial for murder; the white defendants were acquitted. Murray Kempton, ACLU national Board member and N.Y. *Post* columnist, was present at the trial and subsequently reported in detail to the Union.

The subsequent failure of the Leflore County, Mississippi, grand jury to indict J. W. Milam and Roy Bryant for the kidnapping of Emmett Till was sharply criticized by the ACLU.

The Union said that the grand jury's failure to indict, in the face of

uncontradicted testimony at the earlier trial that the two men had taken Till from his uncle's cabin, appears to be a "shocking example of racial discrimination."

The Union's views were made public by its executive director, Patrick Murphy Malin. "The ACLU rarely comments on whether or not a grand jury should indict," Malin said, "but in this instance the facts so far disclosed seem to show clearly that a violation of the right to equal treatment under law has occurred."

The ACLU, Malin pointed out, had not commented on the petit jury verdict in the murder trial, because its concern as an organization is limited to civil liberties and does not extend to judgment on the facts of any case. But the function of a grand jury is to indict upon probable cause, Malin said, and probable cause existed in the kidnapping aspect of the case in view of the sheriff's testimony at the murder trial that Milam and Bryant had confessed that they had taken young Till from the cabin of his uncle.

"In the face of this, there seems no other explanation than that the grand jury simply refused to indict two white men for the kidnapping of a Negro. Such discriminatory treatment by a grand jury, one of the main supports of our legal system of justice, may encourage other persons who wish to do violence to Negroes. It is an open invitation to flout the law.

"However, this latest attack on the principle of equality will not halt the efforts of individuals and organizations who are determined that the idea of equality for all Americans must be eventually achieved in every part of the country which now denies it in any way. The ACLU and others will as one step toward this goal continue to press for changes in the federal civil rights laws which will enable the federal government to take more direct action in protection of minority group rights."

7. American Indians

American Indians in recent years have been subjected to legislative pressures, in Congress and elsewhere, intended to "emancipate" the nation's few hundred thousand remaining indigenous people. The proposed legislation would end federal responsibility for tribal property and, in the opinion of most reservation Indians involved, would mean the liquidation of tribally-owned land, the destruction of tribal government, the end of tribal life and culture, and the nullification of many other rights guaranteed by treaties signed generations ago with the United States of America.

In line with its concern for due process of law, the ACLU's position is that no change in the status of an Indian tribe or its holdings should be made without the tribe's consent.

Tribal councils and organizations (notably the National Congress of American Indians) and other groups concerned with Indian rights (including the ACLU), seem to have succeeded in convincing many Congressmen that Indians do not need or want this type of "emancipation" and that, in fact, Indians are now citizens free to move about the country like anyone else, who vote, who serve in the armed forces, and who pay taxes like other citizens—except on the land and property their ancestors retained by treaties and similar agreements with the U.S. Government. In the twelve months covered by this *Report,* no such legislation got through Congress.

While Congress has halted the passage of such termination legislation, the Interior Department and its Indian Bureau are moving ahead with termination by administrative action. In the summer of 1955 the Bureau sent a policy statement to its Area Directors authorizing the issuance of patents in fee to certain "competent" Indians (permitting them to assume individual ownership of land up to now held in trust for the tribe) regardless of the detrimental effect of tribal interests. However, Glenn L. Emmons, Commissioner of Indian Affairs, in the spring of 1955, urged Congress not to enact S. 401, a bill that would require forced sale of all tribal lands and liquidate the Indian Bureau in three years.

ALASKA AND HAWAII STATEHOOD

The ACLU has throughout the years urged statehood for the two incorporated Territories over which the United States has jurisdiction and in which our Constitution has full force. The arguments pro and con, presently advanced, were set forth by the Union in considerable detail in its March, 1955, *Washington Digest.*

Hawaii. In the past fifty years, 5,000 pages of printed hearings resulting from twelve Congressional hearings involving 700 witnesses, have dealt with the question. The last four investigations have recommended immediate statehood. A bill has three times passed the House. In 1950 and 1951 the Senate Committee on Interior and Insular Affairs recommended statehood. The 1952 Republican and Democratic platforms called for immediate positive action.

Those opposed argue: 1—the U.S. Constitution did not contemplate admitting non-contiguous areas, 2—the representation of the existing States, especially in the Senate, would be diluted, 3—the non-Caucasion element in Hawaii would not be as loyal as our continental citizens.

The arguments receive the following answers: 1—modern transportation places Hawaii nearer in fact to Washington, D.C., in 1955 than California was to the capital when the Pacific coast state was admitted

in 1850, 2—the "dilution" argument is an attack on the Constitution itself and, incidentally, Hawaii has paid more taxes than nine states, is larger than three, and has more inhabitants than four, 3—the great majority of Hawaiians of Japanese ancestry are native-born American citizens; the islands' battle casualties were three times those of the rest of the country in the Korean fighting; on Communist influence in Hawaii, it has allegedly been through the International Longshoreman Workers Union, which has its headquarters in San Francisco; effective action has been taken in Hawaii to nullify such influence as Communism may have had through the ILWU.

Alaska. Senate and House Committees in the 80th, 81st, 82nd and 83rd Congresses have recommended statehood. The 1952 Democratic platform urged immediate full admittance; and the 1952 Republican platform, statehood under "an equitable enabling act."

Opponents say: 1—Alaska could not support itself and would be obliged to overburden its inhabitants with taxes, 2—federal land holdings would not leave enough over for support of a state government. Proponents answer: 1—the Territory even now collects 80% of the sum which would be needed to operate a state government, 2—admittedly the U.S. owns 98% of Alaskan land, but in the last Congress committee approval was given to a recommendation that one hundred million acres be given to Alaska from federal holdings.

The Prospects. Apparently each succeeding Congress will debate the issue, at least in committee. The State Department endorses statehood for both Territories; the Defense and Interior Departments agree to admittance of Hawaii but express some reluctance about Alaska.

None of the arguments or doubts thus far reviewed are of enough apparent weight to successfully postpone statehood for either Hawaii or Alaska. The real barrier is the opposition of Southern Democrats in both the House and the Senate, who fear the Congressional representatives of the new states would support civil rights bills because of the heavy non-Caucasian population in those areas.

LABOR

1. Organized Labor

Right to Work Laws. Seventeen states have passed laws designed to support the freedom of a worker to contract individually with an employer, regardless of union shop or closed shop agreements. In other words, these laws provide that no collective bargaining agreement can require union membership as a condition of employment. The ACLU gave thorough study to the problems raised by this type of legislation,

and in the spring of 1955 announced the following policy position: 1—The ACLU is not concerned with the merit or demerit of the laws in themselves; the ACLU's interest in protecting labor's basic organizing rights, as an expression of free speech, carries no implication that civil liberties require that labor's organizing efforts should always be successful. As a non-partisan organization devoted only to maintaining civil liberties, the Union takes no position on the merits of the arguments that labor unions make in their organizing campaigns.

2—"Our interest is in keeping open the channels of communication through which both unions and employers may present their opinions. We recognize that the labor history of many of the states that have 'right to work' laws is marked by the refusal to rent meeting halls to unions or to allow circulation of union literature, which are violations of the First Amendment. In view of this history, the ACLU is concerned that 'right to work' laws may be interpreted as an invitation to continue the denial of free speech and assembly to labor unions."

3—There are no civil liberties grounds on which "right to work" statutes can be supported. Reaffirming its long-established position, the ACLU holds that union-employer contracts for a union or a closed shop do not violate civil liberties as long as membership in the union is open on a reasonable, non-arbitrary, and non-discriminatory basis. Legislation may be necessary, in some instances, to guarantee such a basis, but not in the form of "right to work" laws.

4—When membership in a union is closed on unreasonable grounds, civil liberties are at stake. As stated in the 1952 ACLU pamphlet, *Democracy in Labor Unions,* "When a union excludes Negroes, it enforces a job preference based on race. When it admits only sons of members, then job rights are based on ancestry. And when a union excludes women, it is discriminating in job rights on the basis of sex. Those standards of preference are a direct denial of the right of equal treatment."

5—Commenting on the position held by advocates of right to work laws that, when workers are not allowed to contract individually for employment, freedom of association is violated, the ACLU holds that "the question of how much freedom of contract, or freedom from monopoly, there should be either in the labor field or in any other does not automatically produce a question of civil liberties. There are wide and vitally important areas involving questions of freedom that lie outside the scope of civil liberties. Among these are freedom of access to jobs and freedom of business contract, for example, a corporation's development of inventions. A community may decide to make access to a job or the development of an invention completely free, or it may decide to require or allow restrictions on either access to a job or in the development of an invention. The considerations which a community

may take into account in deciding such questions range over economic, political and social fields, but are outside the civil liberties field."

A Case in Point. The Department of Justice turned down the request of the ACLU to investigate a complaint of the CIO Textile Workers Union that it had been denied access to meeting halls in Elkin, North Carolina.

If the charges are true, the ACLU said, "a question is certainly raised as to whether a violation of the Federal Civil Rights Act has occurred." ACLU Executive Director Patrick Murphy Malin wrote Arthur B. Caldwell, chief of the Department's Civil Rights Section, noting the TWUA contention "that the city is under the domination of the Chatham Manufacturing Company which controls all indoor meeting places, and that the union has been denied access to these places to carry on legitimate union organizing efforts." The ACLU letter also called attention to the additional charge that the company is using improper methods "to coerce, intimidate, or terrorize" present employees who have expressed union sympathies.

Asserting that the ACLU had made no independent investigation of the charges and did not know whether they were accurate, Malin said, however, that the ACLU knows that "the organizing campaigns of labor unions in the South have been marked frequently by the use of tactics described in the TWUA complaint, and that these tactics are in violation of civil liberties which are the core of our democracy."

According to the TWUA, it has been conducting an organizing campaign among the Chatham Manufacturing Company workers for several months, but has been denied meeting places in Elkin and neighboring counties because of the Company's pressure. Its complaint alleges that a meeting called in a woodlot several miles away from Elkin was marked by a state highway patrolman taking down the license numbers of all cars that came too the assembly. It also claims that workers who have shown sympathy for the TWUA have been told that they would lose their bonus if the union wins bargaining rights. The TWUA says it possesses affidavits alleging this and similar pressure to balk its organizing efforts.

The Justice Depatment replied that the situation "fails to indicate the violation of any Federal Criminal statute warranting action by the Department" but suggested that the case be taken up with the National Labor Relations Board.

Strike Votes and Picketing. Ohio CLU successfully opposed a bill which would have required polling of union members before a strike and also set up a balloting system. The New York Court of Appeals has ruled that an employer may not interfere with peaceful picketing to recruit his workers even if the picketing continues more than two years.

The U.S. Circuit Court of Appeals has held that even after one union has won official certification as sole bargaining agent, a rival union may picket for educational purposes in the absence of any attempt to cause a strike or persuade other union men not to cross picket lines.

A group of independent theatre owners picketed the Minneapolis offices of Columbia Pictures Corporation in objection to film rentals demanded by Columbia; Columbia sought an injunction in a federal district court. Minnesota ACLU filed a friend of the court brief on the basic free speech point, saying: 1—picketing is protected as free speech, 2—speech may be punished if it transgresses legal limits but may not be subjected to prior restraint, 3—prior restraint on picketing is permissible only if it is being conducted in an unlawful manner or seeks to coerce the commission of an unlawful act, 4—inaccuracy, unreasonableness, or falsity does not warrant control of expression, and libel and slander laws offer protection from unrestrained attack. Minnesota ACLU had hoped for a favorable decision for the independent theatre men based on the free speech point but the parties to the controversy reached an agreement.

Unions and Politics. Ohio CLU successfully opposed in the state legislature the Kile bill which would have prohibited contributions by labor officials or labor unions to candidates for political office or their campaign committees. Legislation of this type did pass in Wisconsin and Washington.

In the fall of 1955 the Department of Justice began the first prosecution under the Taft-Hartley Act section which prohibits political contributions by unions; the defendant is the United Auto Workers Union; the case is only in its first stage but the Metropolitan Detroit Branch and the national office of the ACLU are thoroughly examining the civil liberties issues.

Unions and their Members. Agreement has been reached in the important Regelson case. Joseph Regelson worked for many years as a druggist in New York City and left that line of work taking a "withdrawal card" from his union in 1945 and 1946. His application for a card in 1947 was refused. He claimed that the refusal was based on his anti-Communist activity within the union and his criticism of the group's alleged Communist leadership. The ACLU instituted an injunction suit on Regelson's behalf asserting that he had been given no charge and no hearing, and that no evidence was submitted justifying denial of a card. It was also pointed out that failure to have a card would make it impossible for Regelson ever to take up work again as a druggist.

The union has yielded and given the druggist his card, although refusing to concede that it violated its own constitution in the denial.

ACLU Executive Director Patrick Murphy Malin said that the agreement is "an important victory for democracy in labor unions. . . . It strengthens the right of any labor union member to exercise his right of free speech within the union, despite the opposition of the union's leadership."

New York Civil Liberties Union intervened successfully in a case in which six waiters were denied vacation pay by their employer, and in which the officers of the men's union refused to act on their behalf. NYCLU intervention was addressed to the point of deprivation of due process within the union by the failure of the union officials to act on behalf of the men despite the clear obligation to do so.

The CIO United Steelworkerrs Union has distributed a questionnaire to its members to find out what they think about their union, the services it provides, and the conduct of its affairs. The inquiry is being carried out in cooperation with the University of Chicago Industrial Relations Center which alone will see the replies. The ACLU believes that action of this kind will greatly strengthen democracy in trade unions.

2. Problems of Individual Workers

Discrimination on Grounds of Political Beliefs. The California, Hartford, Conn., and Illinois ACLU affiliates have this year studied the civil liberties question involved in a possible extension of FEP anti-discrimination clauses to include a prohibition against discrimination on grounds of a worker's political beliefs. The question is at this time colored by conflicting public opinion about the degree to which Communist Party membership constitutes conspiracy or political association.

The national Board of the ACLU, after examining the matter, concluded that neither the facts nor the arguments relating to discrimination for political belief have as yet been fully developed; the problem was set aside for later study and determination.

Queries about Union Membership. Reversing a regulation of long standing, a majority in the National Labor Relations Board has ruled that an employer may question his workers about their union affiliations and activities.

Refusal to Join a Union. It seems likely that a number of cases will appear, in association with the right to work laws, where an individual will refuse to join a union; for ACLU policy, see above, p. 100. For an instance in which the ACLU upheld a refusal—because the union itself discriminated, see the Fulwood case, p. 91.

Discharge for Cause: the Polumbaum Case. The ACLU, in April, 1955, urged the United Press to re-hire television-news writer Theodore S. Polumbaum who was fired by the UP in 1953 after he refused to

testify fully concerning alleged Communist affiliations in an appearance before the House Un-American Activities Committee. The UP replied that it could not do so. It contends its dismissal of Polumbaum was just and proper because "his conduct before the Velde committee in Washington ended his usefulness in the service and made him a serious liability." The ACLU holds that since there was no evidence Polumbaum ever distorted the news, the UP should have retained him in accord with fair play and constitutional guarantees of free speech.

Polumbaum's dismissal was challenged by his union, The American Newspaper Guild, which was informed by UP that Polumbaum's action before the House Committee raised doubts as to his honesty. The issue was submitted to an arbitrator who ruled that UP's reason was not a proper ground under the contract for dismissal. He added that if he were free to consider additional arguments advanced during the hearings, he would decide that Polumbaum's injection of himself into a controversial situation was a basis for discharge. The ACLU disagreed with this part of the arbitrator's opinion. The Guild has filed a complaint in a N.Y. court to enforce the arbitrator's award, claiming that his comment about controversy is extraneous to the basic issue.

The divergent positions of the ACLU and the UP were made known in an exchange of letters between executives of the two organizations. ACLU Executive Director Patrick Murphy Malin conceded the UP's interest in protecting itself but noted that Polumbaum was discharged because of his fiery conduct when he pleaded the Fifth Amendment before the House Committee and refused to answer questions concerning alleged Communist affiliations while a student at Yale. In his employment application form filed with the UP in 1950, Polumbaum had denied membership in the Communist Party. In 1953—the year of his dismissal—he told the Committee he would be willing to tell his employer about his personal political activities.

United Press Vice-President Earl J. Johnson said he personally directed the firing of Polumbaum because the writer "did what no United Press employee should have done: he cast himself in the role of a conspicuous figure in a public controversy." Johnson said the newsman's refusal to answer committee questions endangered the UP's goodwill among its newspaper and broadcasting subscribers who depend on the UP's impartiality and reliability as a news-gathering organization.

Johnson said Polumbaum "identified himself plainly as a special pleader . . . destroyed his usefulness to the service . . . was obviously loaded with fixed opinions which were crying to burst forth . . . and made such a spectacle of being a zealot that we could not let him contribute another word to the service."

Johnson did not deny the ACLU's counter-reply that a careful check of Polumbaum's work-file disclosed no evidence of slanting or bias in

his news work. Malin asserted that Polumbaum did not create controversy, but was drawn into it under subpoena. Malin further argued that the United Press—a leading representative of a free press—should uphold the constitutional principle that a man should be penalized only on the basis of proven misconduct, and not fear or suspicion:

"Apart from the lack of biased reporting, we are troubled that the arbitrator's decision means that a reporter faces severe penalties if he speaks out freely on public affairs, even controversial affairs. And we believe that a citizen who is employed by a news service is the same as other citizens and does not forfeit the rights of citizenship. We know of no case in private employment where an individual faces discharge merely because of a position he has taken on a public question which is unrelated to his job qualification. The situation would be different if the individual actually used his particular job to promote his individual views, for this would be proof of bias, but when he is discharged only because of his opinions on a controversial issue, he is being penalized because he exercises his First Amendment right of free speech."

Johnson, for the United Press, denied that Polumbaum's dismissal constitutes a violation of civil liberties. He said that "United Press reporters and writers carry a public trust that can be compared with the most sensitive posts in government or in education." Johnson emphasized the necessarily non-partisan nature of news-gathering with the observation that, "within reasonable limits UP writers and editors are about as near politically sexless as any group can be."

The ACLU countered that reporters are also thinking men and citizens, with the right to form opinions without fear of reprisal, and that if the Polumbaum firing sticks, other reporters will fear to make even public speeches lest their jobs be weighed in the balance. The ACLU urged the UP to follow government procedure in similar cases by moving Polumbaum to a "non-sensitive" writing job. Johnson replied that this was impracticable because UP had no "non-sensitive" posts except possibly in its mechanical departments, and that if another "Polumbaum case" arose he would act in the same manner.

"As to judging Polumbaum by his writing alone, the quality of a man's technical skill is not the sole measure of his usefulness to the United Press. He contacts with clients and news sources and his personality also weigh heavily in his evaluation. After his appearance in Washington Polumbaum's relations on such levels (in and outside the service) were sure to be abrasive."

WOMEN

The ACLU has long fought discrimination against women—discrimination affecting their right to vote, to hold public office, to serve on

juries, to continue teaching and in other careers although married, to receive equal pay for equal work and so on. The Union's concept of equality follows the patterns laid down by the U.S. Supreme Court in interpreting those constitutional guarantees which relate to "equal protection of the laws." But the ACLU has not found differential laws discriminatory (as opposed to laws calling for mathematical equality), if the classification of individuals is reasonable and results in true equality, as opposed to mathematically exact equality.

For many years the Union has been urged to support the so-called "Equal Rights" Amendment which reads: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." But the ACLU has not given that support and has in fact opposed the Amendment because: 1—the language of the proposal might well freeze mathematical equality into our Constitution and stand in the way of or overrule desirable differential legislation, and 2—the scope of the Amendment, limited to rights under law, is not broad enough to warrant so fundamental a business as changing our Constitution.

The ACLU believes that the above objections are substantial in the light of the history of women's position in society.

Legal Remnants of Feudalism. The old common law concepts of feudal life, imported into this country by Blackstone (of which the punch-line "Husband and wife are one and that one is the husband" is the best known) have died hard and are not yet wholly dead. Aimed primarily at the married woman, they seriously curtailed her rights over her children, her property and even her own person. Discriminatory, inequitable, and degrading, they deserved to be wiped off the statute books and out of case law. One by one they have been done away with until now there are only a few minor, if irritating, traces of them left. Only five states still forbid women jury service, only a small number prefer fathers to mothers as guardians of their children, only a handful require a wife to secure consent of her husband or of a judge before she can engage in an independent business. These things, while bad, are nevertheless definitely on the way out. Only the remnants of feudalism remain.

But even in this bad area there is a little good. It is accepted social policy in most countries nowadays that it is better for mothers not to have to work outside the home but to be able to stay home with their children during a short part at least of their early infancy. For this purpose husbands must contribute support for both wife and children during the period in question. Hence the need of differential laws on this subject if true equality of opportunity and sound social policy are to be achieved.

Differential Labor Laws. Differential labor laws for women are not remnants of feudalism but are a direct outgrowth of the industrial revolution. Designed to curb the worst of its exploitations, they first took no cognizance of sex. The Supreme Court having declared such laws unconstitutional for men but not for women, the latter type of law thereafter experienced a phenomenal growth. The Supreme Court having now swung to a more normal view of the need of such laws for both men and women, this poses the question whether differential laws for women are needed any longer. Certain laws (the night work law for instance) have been cited as discriminating against women and some of them may well do so. It is a question of fact in each case. But when we are considering an amendment to our Constitution, the question cannot be decided on the basis of the relative merits or demerits of any particular law. Rather must it be decided on the overall question of policy: do we wish to preserve in our Constitution the power to legislate differential laws when the circumstances demand them in the interest of true equality or do we prefer to freeze that right out of our Constitution forever?

Matters Not of Law but of Custom. The greatest discriminations which women suffer from today do not derive from law at all but from custom and habit. The factors militating most against women lawyers, for instance, the fact that it is perhaps harder for them to get clients, or to make the big law firms than men, that they are supposed to work harder for less return, all these things merely add up to bad habits with possibly a dash of fear of the strange and unpredictable thrown in. None of these discriminations are found in the statute books and few of them can be abolished by legislation. Even the practice of unequal pay for equal work, a world-wide phenomenon extremely interesting in its psychological motivations, is nothing but a universally bad habit. It too does not appear on the statute books, although, unlike some of the other bad habits mentioned above, it can be abolished by statute. But the amendment in question, limited as it is to discriminations existing in law, would not touch it. Many people fail to realize this fact and support the amendment under the happy impression that it would cure these ills. It can of course do no such thing.

In September, 1955, the Due Process Committee of the ACLU and interested Board members met with representatives of the Connecticut Committee for the Equal Rights Amendment. This meeting was part of the Union's continuing program for careful reexamination of the whole problem; the Due Process Committee will report on its further study.

Part IV. INTERNATIONAL CIVIL LIBERTIES

The Union has continued to be concerned with a wide variety of activities in relation to the role of the United States in international civil liberties,—ranging from the position of our government in United Nations' efforts to the Senate controversy over the "Bricker amendment" and to colonial administration,—on which the United States reports to the United Nations.

1. International Agreements

Continuing world tension and conflict have blocked most efforts of the United Nations to extend civil and political liberties. The United States, taking the position that the world atmosphere is inhospitable to international agreements to universalize human rights, has voted against all such proposed pacts. While it is obvious that few such agreements can now be effectively implemented by international action, the American position stems mainly not from the inhospitable atmosphere, but from an inhospitable Senate. Even the international agreements already signed by the United States in recent years either have not been acted upon by the Senate,—notably the genocide convention, —or the State Department has refused to submit them,—notably the covenant on the political rights of women.

The Union in common with many other national agencies has urged United States adherence to these international agreements and Senate ratification, all without effect in view of the persistent efforts of the backers of the Bricker Amendment to reverse the adverse vote of a year ago. The amendment in a slightly different form, but still requiring in principle the consent of all 48 states to international treaties affecting internal law, is before a Senate committee on a favorable report, 3 to 2, of a sub-committee. It is opposed by the Administration in any form and by numerous national agencies, including the Union. Active support for the proposal to change the historic treaty-making power appears to be less than a year ago, but fears persist that somehow the United States may be subjected by treaty to some international jurisdiction that would threaten the liberties of the American people.

These fears were first aroused in the Senate by human rights covenants and the abortive project of a treaty to extend international freedom of communication by press, radio and newsreels. The covenants, now

completed after five long years of debate, go to the 1955 Assembly for action, with little prospect of effective implementation even if approved. The Union has urged at least a provision for access to the United Nations by those whose rights are claimed to be violated. The drafts make no such provision, confining complaints of violations solely to ratifying member States, a most unlikely remedy.

The Union supported in the United Nations Human Rights Commission the proposals of the United States delegation for active service by the secretariat in promoting civil and political rights through technical advice, periodic reports of actual performance, and special studies of particular rights. Only the provision for technical advice was adopted, and it is doubtful what value that will have, dependent on how many countries want it.

Freedom of information has bogged down in fruitless debates over limitations, which have so discouraged the United States as the initiator of the conventions that it no longer urges them. The Union, together with the International League for the Rights of Man, with which it is affiliated, has repeatedly urged action to tackle at least the problem of news censorships, so flagrant in so many parts of the world, but so far without tangible effect.

2. The UN and U.S. Loyalty and Security

Alone of all members of the United Nations, the United States has set up an agency to test the loyalty to the U.S. of American employees, not only at headquarters in New York but in the offices of the specialized agencies in Paris, Rome, Geneva and elsewhere. While the Union has not objected to this unique procedure so long as it is confined to making recommendations to agency directors, it emphasizes the Charter provisions that all international civil servants are beyond the control of any member State and that all States are under obligation not to try to influence the directors in personnel matters.

Discharged Employees. When a score of Americans were discharged for refusing to testify before a Senate committee, invoking the Fifth Amendment, the Union aided on their appeals and supported the judgment of the tribunal which awarded them damages in lieu of reinstatement. The United States, after announcing it would contest payment, finally abstained in the United Nations vote, but secured agreement for considering a change in the system by adding higher judicial review. The Union expressed its view that judicial review, presumably by the International Court of Justice, is not objectionable if both sides have access to the court and the procedure is in fact judicial. A ten-member committee was created to draft a report, recently (July, 1955) published for submission to the 1955 Assembly. While it pro-

vides access to both sides, it also permits any member State to intervene to appeal a decision, thus injecting what may readily be political elements into the judicial process. The Union has not yet taken a position on the report.

When the American director of the United Nations Educational, Scientific and Cultural Organization (UNESCO) did not discharge American employees who had refused to appear in Paris before the Presidential Loyalty Board, Mr. Lodge, U.S. Ambassador to the United Nations, took the director publicly to task. The Union then took Mr. Lodge publicly to task for violating the Charter mandate against interference by a member State with the "independence" of the director-general. The UNESCO rules were thereafter changed and seven employees were let out. Again, as in the Headquarters cases, the tribunal upheld the employees and ordered reinstatement or damages.

The U.S. position has not been upheld in a single contested case of an international civil servant carried up on appeal. The Union has assisted several employees with legal advice and in securing funds for their appeals.

Restrictions on Movement of Foreigners. The restrictions on foreigners coming to the United Nations in New York as non-governmental representatives continued even more tightly in the cases of those admitted to the country by permission of the Attorney-General. His permission is required for any alien who may be excludable under the anti-Communist provisions of the Internal Security Act of 1950. The United Nations agreement with the United States provides for the admission of any accredited representative regardless of politics,—since the UN unlike the U.S. erects no political barriers.

Representatives so admitted have been in the past confined in their movements to the "United Nations area," interpreted to be New York and vicinity. But the area has now been narrowed. In the last year the government drew lines to cover central Manhattan only, apparently with the idea that the country's security would be endangered north of 96th Street or south of 23rd. Thus the Rev. Michael Scott of London, who on grounds of conscience refused to fill out the questionnaire as to his political views and associations, was restricted to the central Manhattan area, and only by special dispensation was allowed to lodge south of it at the Episcopal Theological Seminary. Again by special dispensation, the Department of Justice graciously permitted him to preach at the Cathedral of St. John the Divine, far out of his permitted district, not desiring, as the official communication stated, "to interfere with his ministerial function."

The Union protested in vain these nonsensical restrictions, receiving the reply that access to the United Nations was all that mattered. The

same treatment as that given the Rev. Mr. Scott was also given quite impartially to others admitted by order of the Attorney-General.

3. U.S. Colonies and Occupied Areas

While the United States reports to the United Nations on its Pacific Trust islands (outside the Defense Department's strategic territory) and submits commendably full reports on its several non-self-governing areas (the Virgin Islands, Hawaii, Alaska, Guam and Samoa) it has not responded favorably to appeals to encourage other administering countries to follow its example. Civil and political rights are regularly included in the U.S. reports, but only one other administering State among seven does so.

Conditions in Guam and Samoa raised no issue, nor in the Pacific islands under civil control. In the Virgin Islands a change in the organic act by Congress, opposed by the Union, has crippled self-government, intensified by the appointment of a "continental" as governor following a native governor. The Union has urged Islands' leaders to secure agreement on another revision of the organic act to overcome the dissension largely responsible for the restrictions imposed by Congress.

Puerto Rico. In Puerto Rico—sufficiently self-governing in the view of the United Nations no longer to be reported on—trials took place of Nationalists involved in the shooting up of the House of Representatives, but no issue of a denial of rights to the defendants was reported. Nor did any such arise in the similar trials in New York of members of the tiny but fanatically pro-independence Party.

Governor Luis Munoz Marin of Puerto Rico, its first elected governor, has invited Roger Baldwin to make a survey of civil liberties in the island in order to suggest improvements in law and practice, and Mr. Baldwin will do so shortly.

The Ryukus; Okinawa. With the restoration of the sovereignty of Western Germany and the conclusion of a peace treaty with Austria, the Ryukus islands are the only area left in U.S. military occupation as a result of the world war. The greatest military base in the Pacific is located on Okinawa, largest of the Ryukus. Military rule is complete. The Union's attention to it was enlisted through the Japanese Civil Liberties Union, which complained that natives' rights were being violated by suppressing local government, by arbitrary controls and by seizures of farmers' lands without adequate compensation. The Japanese organization, representing the Okinawans on the basis of U.S. declarations that ultimate sovereignty resides in Japan, urged the Union to put the problems to the Defense Department. The Union did so. The facts

were not in dispute, but the conflict between military security and local autonomy was apparent and debatable. The Union made a series of suggestions to the Defense and State Departments, which it is understood are under study with a view to remedying what are admittedly justified grievances. The Defense Department permitted inspection by a group of Japanese journalists who reported only what was generally known as to the restrictions of military government and the requisitions of land for bases. The problems have attracted world-wide publicity—especially exploited in the Communist press.

ACLU Organizational General Action. The Union continues its affiliation with the International League for the Rights of Man, an agency accredited by the United Nations as consultant. It is also represented in the Conference Group of U.S. National Organizations on the United Nations, the chief avenue for contacts with the U.S. Mission to the UN and the various U.S. delegations. The Union has also participated in national conferences dealing with the U.S. policies in international civil liberties, notably those called by the American Association for the United Nations and Americans for Democratic Action.

Part V. BALANCE SHEET OF COURT CASES

FAVORABLE IN UNITED STATES SUPREME COURT

1. The unanimous decision requiring the defendants in the segregation cases make a prompt and reasonable start towards abolition of segregation, the burden being on the defendants to establish both need for time and good faith compliance. *(Brown)*

2-3. The 6-3 decisions stressing the importance of the privilege against self-incrimination, that its use is for the innocent as well as the guilty, and holding that the privilege against self-incrimination can be raised before a congressional committee in any way sufficient to put it on notice. *(Quinn and Emspak)*

4. The 6-3 decision holding that once a person raises the privilege against self-incrimination, he must be given a clear choice between standing on his objection and being ordered to answer before he can be prosecuted for contempt. *(Bart)*

5. The unanimous decision holding that legitimate theatre business is within the scope of the federal anti-trust laws. *(Shubert)*

6. The unanimous decision of the U.S. Supreme Court reversing a lower court order which had barred an attorney from admission to practice in the federal court in the Southern District of Texas, because the attorney had been employed for 25 dollars a week in the office of another attorney rumored to be Communist and had recently come from New York. The court below had also inquired into the applicant's religious beliefs, his reading of various publications, whom he voted for and what organizations he belonged to. *(Levy)*

7. The unanimous decision holding that a defendant charged with violation of a state habitual criminal law cannot be tried until he has the opportunity he requests to secure an attorney. *(Chandler)*

8. The unanimous decision holding that a person who was insane at the time he was tried by a state court without aid to counsel has been deprived of due process of law. *(Massey)*

9. The 6-3 decision holding that judge who indicates his hostility to defendant's counsel during a federal criminal trial and becomes personally embroiled in disputes with the attorney is disqualified, despite the attorney's provocation, from himself sentencing summarily for contempt of court. *(Offutt)*

10. The 6-3 decision of the Supreme Court holding that aliens being deported need not sue the Commissioner of Immigration in Washington, but may sue the local District Director, and that the alien need not wait until after he is apprehended by the authorities before bringing judicial proceedings to test his deportability. *(Pedreiro)*

11. The 6-3 decision holding that a judge who composes a Michigan one-man grand jury cannot himself make the determination of whether somebody has been in contempt of the grand jury. *(Murchison)*

12. The 6-2 decision that a religious conscientious objector, who nonetheless believes in theocratic wars, cannot be denied exemption under the Selective Service Law. *(Sicurella)*

13. The 6-2 decision holding that a draft registrant cannot merely be given vague hints as to the contents of the FBI report in reference to his claims as a conscientious objector, but must be furnished with a full and adequate résumé of the charges under the Selective Service Act. *(Simmons)*

14. The 5-3 decision that a Selective Service Board must furnish a registrant a copy of the Justice Department's recommendation on his claim as a conscientious objector. *(Gonzales)*

15. The refusal to review the decision of the New Jersey Supreme Court holding unconstitutional the free distribution of Gideon Bibles to New Jersey school children through the use of public school machinery. *(Gideons International)*

16. Refusal of the U.S. Supreme Court to review the decision of the U.S. Court of Claims that a person erroneously convicted by a court-martial can maintain a damage action against the U.S. under the Unjust Convictions statute. *(Robertson)*

17. The refusal to review the decision of an intermediate Pennsylvania appellate court that in determining the custody of a child, the courts are not required to award custody to persons of the same religious faith as that of the child. *(Kuntz)*

18. The refusal to review the decision of the U.S. Court of Appeals in Philadelphia holding that a state prison officer could be prosecuted under the Federal Civil Rights Laws for brutality. *(Walker)*

FAVORABLE IN LOWER FEDERAL COURTS

1. The decision of the Court of Appeals in Washington, D.C., holding that a person could not be denied a passport solely because of his being an active officer of an anti-Stalinist group listed on the Attorney General's list. *(Shactman)*

2. The decision of the Court of Appeals in Washington, D.C., that the State Department must grant a hearing before a passport can be

denied and give reasons for such denial. *(Nathan)*

3. The decision of the Court of Appeals in Baltimore ruling unconstitutional racial segregation in government-maintained bathing beaches and bath houses. (On appeal) *(Dawson)*

4. The decision of the Court of Appeals in Denver holding unconstitutional an Oklahoma statute requiring a Negro to be so identified on the ballot, and holding further that the candidate may sue Election Board members for damages under the Federal Civil Rights Act. (On appeal) *(Key)*

5. The decision of the Court of Appeals in Washington, D.C., holding unconstitutional the major parts of the government's second indictment of Owen Lattimore for perjury in denying before a Senate Committee that he had ever been a follower of the Communist Party line or a promoter of Communist interests.

6. The decision of the Court of Appeals in Washington, D.C., holding that the Post Office had acted erroneously when it had refused to deliver all mail addressed to the disseminators of a publication it thought obscene, since only mail directly dealing with the obscene publications could be so returned under the statute, and that it made no difference that the Post Office could not legally open the mail to see what the mail dealt with. *(Sunshine Book Company)*

7. The decision of the Court of Appeals in Washington, D.C., holding the implementation of the Gwinn Amendment to be unconstitutional. *(Pudder)*

8. The decision of the Court of Appeals at Philadelphia that a state prisoner under sentence of death for murder must be granted *habeas corpus* when the prosecution suppressed evidence that defendant may have been drunk at the time of the crime, even though this only went to the question of the degree of the crime he committed and the suppression may have been innocent. *(Dye)*

9. The decision of the Court of Appeals in New York holding that psychological brutality in coercing a confession in a state court was ground for invalidating a conviction. (To be appealed) *(Caminito)*

10. The decision of the Court of Appeals at New Orleans that when a defendant refused to give an explanation of the presence of marijuana on his premises, this could not be admitted in evidence against him since it would violate his Fifth Amendment privilege against self-incrimination. *(Helton)*

11. The decision of the Court of Appeals in San Francisco holding unconstitutional as an *ex post facto* law the Guam Organic Act Amendment which deprived an accused retroactively of a right to an indictment by a grand jury which existed when the crime was committed. *(Putty)*

12. The decision of the Court of Appeals at San Francisco holding that due process was violated by the federal District Court in Los Angeles which disbarred an attorney without notice or hearing for conduct not committed in or near the presence of the judge trying the case. *(Lacy Pioneer Society)*

13. The decision of the Court of Claims that an executive agreement cannot impair constitutional rights. *(Sherry)*

14. The decision of the Puerto Rico Supreme Court reversing the conviction under Puerto Rico's Little Smith Act merely because the defendant raised her hand to take an ambiguous oath during a lengthy fund-raising speech for the revolutionary Nationalist Party of Puerto Rico, since raising one's hand to take an oath is not advocacy. *(Reynolds)*

15. The decision of a District Court in Washington, D.C., holding it improper for the government to ask that a judge disqualify himself because of personal bias and prejudice in favor of a defendant, when such claim is based solely upon errors of law made by the trial judge, his recital of the background of the case, and his reservations on certain legal points. *(Lattimore)*

16. The decision of the District Court in Maryland holding that prejudicial trial delay due to the government's prosecuting a treason defendant in the wrong place justified a dismissal of the treason indictment because the resultant delayed trial then would have violated the Sixth Amendment's guarantee of a speedy trial, witnesses needed by the defense no longer being available. (To be appealed) *(Provoo)*

17. The decision of a District Court in New York City holding that naturalization could not be denied to a person merely because he had been accused by a masked witness before a congressional investigating committee of past or present membership in the Communist Party. *(Mazel)*

18. The decision of the District Court in Washington, D.C., that because a person talks to and corresponds with an undersecretary of state, the requirement that a hearing be granted before a passport can be denied, has not been satisfied. *(Clark)*

19. The decision in the District Court in Utah holding that a person under a state charge of murder was entitled to counsel even during the stage when he was reenacting the crime for the authorities, and that the failure to grant counsel at that point, though such had been requested, was a violation of due process. *(Sullivan)*

20. The decision of a District Court in Washington, D.C., holding that aliens who had legally entered the country could not be denied a suspension of their deportation on the basis of confidential information, not made known to them. (To be appealed) *(Maeztu)*

FAVORABLE—STATE COURTS

1. The decision of the Supreme Judicial Court of Massachusetts holding unconstitutional that state's Sunday Law permitting prior censorship of movies only on Sunday. The decision resulted in the showing of the movies "Miss Julie," "One Summer of Happiness," "The Game of Love." *(Brattle Films, Inc.; Times Films Corp.)*

2. The decision of the Iowa Supreme Court invalidating an Iowa statute requiring licensing of motion picture theaters without any standards. *(Central States Theater Corp.)*

3. The decision of the Massachusetts Supreme Court holding that a proposed bill to require private and public schools to discharge a teacher who refuses to testify as to his Communist activities because of the privilege against self-incrimination, would be unconstitutional, as would be the disbarment of a lawyer, a banning of a newspaper editor or reporter or the prevention of a clergyman from serving his church. (Opinion of the Justices, April 3, 1955)

4. The decision of the New York Court of Appeals holding that a criminal court cannot exclude the public and press from a compulsory prostitution trial, and that the defendant (Jelke) can get a new trial because of this, though the press has no standing to attack the exclusion order. *(United Press)*

5. The decision of the Supreme Court of Wisconsin holding the Gwinn Amendment unconstitutional on both federal and state constitutional grounds. (To be appealed) *(Lawson)*

6. The decision of the Supreme Court of Illinois holding the Gwinn Amendment unconstitutional on state constitutional grounds.

7. The decision of the Court of Appeals in New York holding that where it was for the welfare of a boy to attend a church different from that of his parents, he could do so despite a parental separation agreement that he would be brought up in the faith of the parents. *(Martin)*

8. The decision of the Supreme Court of Florida holding that an attorney cannot be disbarred for his having invoked his privilege against self-incrimination in refusing to answer questions about Communist Party membership when questioned by a court before which there was no evidence of any affiliation by the attorney with the Communist Party, though stating that a person found to be a Communist could be disbarred. *(Sheiner)*

9. The decision of the Florida Supreme Court holding that a witness could refuse, on the basis of the privilege against self-incrimination, to answer questions on communist associations, even relating to the period for which he could not be prosecuted because of the statute of limitations. *(Feldman)*

10. The decision of the California Supreme Court holding that evidence illegally and unconstitutionally obtained through concealing microphones in homes could not be used in evidence. *(Cahan)*

11. The decision of the New York Court of Appeals holding that an employer may not enjoin peaceful picketing of a store to attempt to recruit his employees to join the union, no matter how long the picketing continued. *(Wood)*

12. The decision in the New York Court of Appeals reversing the conviction of a *Catholic Worker* editor for selling a copy of his autobiography on the streets without a license. *(Hennacy)*

13. That part of a decision in the Utah Supreme Court holding that a new trial can be granted on the basis of newly discovered evidence obtained later than the normal five-day statutory period, by the granting of a writ of *coram nobis*—even though the court refused to grant the writ in the case before it. *(Neal)*

14. The decision of the Kentucky Court of Appeals holding that an impoverished person could not be required to pay for the minutes of his lengthy trial merely because the stenographer could not be immediately paid but could only become a creditor of the defendant. *(Braden)*

15. The decision of the Supreme Court of Florida holding that the privilege against self-incrimination bars the state from relying on a bookmaker's alleged purchase of federal gambling tax stamps and payment of 10% federal tax on gambling as a basis of a suit to stop such activities. *(Boynton)*

16. The decision of the Supreme Court of Ohio holding that a Communist cannot be discriminated against by being given a greater punishment than would a non-Communist for a false registration of an automobile. *(Hashmall)*

17. The decision of the Supreme Judicial Court of Massachusetts refusing to review the denial of an injunction by a trial court which would have banned before publication a book critical of the Krebiozen drug as a cancer cure. *(Krebiozen Research Foundation)*

18. The decision of an intermediate appellate court in Ohio holding movie picture censorship unconstitutional. *(RKO Pictures)*

19. The decision of a California intermediate appellate court holding unconstitutional a California statute authorizing the conviction for vagrancy of anyone found to be in the association of thieves. *(Berta)*

20. The decision of an intermediate court of appeals in California holding unconstitutional an ordinance banning the building of a private Catholic school in the same zones in which public schools were permitted. *(Catholic Welfare Federation)*

21. The decision of an intermediate appellate court in New Jersey holding that a son residing behind the Iron Curtain who wishes to inherit his father's estate here cannot be asked questions as to communist affiliations. *(Wozer)*

22. The decision of a lower court in Baltimore holding that the movie "The Game of Love" was not obscene. (Non-appealable) *(Times Films Corp.)*

23. The decision of a lower court in New York City holding that citizens may complain to the Police Commissioner about subordinates without being subject to criminal libel prosecutions. *(Fine)*

24. The decision of a Supreme Court in New York holding that to deny a license for a burlesque theater is censorship without even reasonable grounds for belief that what was to be censored would be objectionable. (To be appealed) *(Phillips)*

25. The decision of a trial court in Maryland holding invalid as unconstitutionally vague a sixty-one-year-old state law prohibiting the display of crime and lust magazines to minors. *(Stein)*

26. The decision of the Supreme Court of New York City denying three police department applications to tap telephone wires. *(In Re Anonymous)*

27. The decision of a lower court in California holding that tax forms should not contain a loyalty declaration when only certain groups seeking tax exemption are required to sign such an oath. *(Hoffman)*

28. The decision of a Supreme Court in New York holding that a person who admitted past Communist Party membership could not be barred from employment as a psychologist in the New York City Department of Hospitals. *(Havel)*

29. The decision of a California lower court holding unconstitutional the requirement of filing a loyalty oath for a veteran as a prerequisite for real property tax exemption. *(Speiser)*

30. The decision of a trial court in Baltimore holding that the First and Fourteenth Amendments prohibit the state from deleting that part of motion picture dialogue in which a priest is told to "Go to hell." (*Columbia Pictures Corp.*, "On the Waterfront.")

UNFAVORABLE—U.S. SUPREME COURT

1. The refusal to review the decision of the Supreme Court of Utah denying a hearing to a man sentenced to death for murder when he alleged that the prosecution had knowingly used perjured testimony, suppressed evidence, and that defense counsel had failed to raise defenses known to them. *(Neal* v. *Graham)*

2. The refusal to grant a stay of execution to permit review of a decision of the Utah Supreme Court denying a new trial in the same case *(Neal)* though it was allegedly shown that the defendant could not or would not have been convicted, at least for first degree murder, in the absence of knowing use of perjured testimony, suppression of evidence, and failure of defense counsel to raise defenses known to them.

3. The refusal of the Supreme Court to review the decision of the U.S. Court of Appeals in Denver holding that absence of counsel in a state criminal trial for murder, at the time of return of verdict, sentence and motion for a new trial, is not of itself a violation of due process of law, in the absence of demonstrable prejudice, and that such prejudice could not be found in the denial of an opportunity to defense counsel to raise the question of improper influence upon the jury. *(Neal* v. *Beckstead)*

4. The 6-2 decision holding that a New York policeman could be convicted for criminal contempt for refusing to tell the grand jury about whether he had received bribes, regardless of whether his waiver of immunity from prosecution for giving self-incriminatory testimony was valid. *(Regan)*

5. The decision dismissing the appeal from an intermediate appellate court in New York which held that a permit could have been denied by public school authorities to use a building for a peace forum after hours on the ground that no actual discrimination in the use of the building by outside organizations had been shown. *(Ellis* v. *Dixon)*

6. The 6-2 decision holding that a hearing officer under the supervision of officials in the Immigration Service charged with prosecuting functions may hold a hearing on the question of deportability without violating due process. *(Marcello)*

7. The unanimous decision that the filing of an alien's naturalization petition two days before the effective date of the Immigration Act of 1952, when the alien qualified for naturalization under both the old and new law, but may be deportable solely under new law, does not prevent the beginning of deportation proceedings against the alien pending determination of his naturalization case. *(Shomberg)*

8. The 5-3 decision holding the federal gamblers' occupational stamp tax not to be a violation of the Fifth Amendment privilege against self-incrimination, on the theory that the paying of the tax only gives permission to gamble in the future and that one can therefore avoid incrimination by giving up gambling. *(Lewis)*

9. Refusal to review the decision of the Supreme Court of Alabama which upheld that court's miscegenation statute. *(Jackson)*

10. The refusal to review the decision by the Supreme Judicial Court of Massachusetts which refused to allow the adoption by a Jewish couple

of illegitimate twin children born to a Catholic mother, even though the mother wanted the adoption and it would have been in the children's best interests. *(Goldman)*

11. The refusal to review the decision of the Pennsylvania Supreme Court upholding Pennsylvania's law in reference to juvenile delinquents which did not afford normal due process protections, on the theory that the proceedings are civil in nature. In this particular case, the juvenile had been required to disclose his wrongful conduct and had not been granted the privilege against self-incrimination. *(Holmes)*

12. The 8-1 decision refusing to review the decision of the Pennsylvania Supreme Court which in effect affirmed the conviction of a newspaperman for reporting on a court proceeding involving a public employee because it involved the dissemination of scandal. *(Donaducy)*

13. The refusal to review the decision of the Pennsylvania Supreme Court holding that a person who had been subjected to torture by Georgia authorities could nonetheless be extradited back to the same prison camp from which he had escaped. *(Brown)*

UNFAVORABLE—LOWER FEDERAL COURTS

1. The decision of the Court of Appeals at New Orleans refusing to enjoin racial segregation on public golf courses. (On appeal) *(Holmes)*

2. The decision of the Court of Appeals in the District of Columbia holding that a federal employee can be dismissed under the security program from a non-sensitive position. (To be appealed) *(Cole)*

3. The decision of the Court of Appeals in Washington, D.C., that the Attorney General could conduct hearings on whether to list an organization on his subversive list even though he had previously stated that he had already determined the nature of the organization. (To be appealed) *(National Lawyers Guild)*

4. The decision of the Court of Appeals at Philadelphia upholding the conviction of several Communists under the Smith Act despite the failure of a showing (according to the dissenting justice) that there was any calculation to incite persons to violence as soon as circumstances would permit. *(Mesarosh)*

5. The affirmance by the Court of Appeals at San Francisco of a conviction under the Smith Act of several Communist defendants despite certain unconstitutional deficiencies in the charge of the court to the jury. *(Yates)*

6. The decision of the Court of Appeals in New York holding that the Immigration Service may subpoena a naturalized citizen to deter-

mine whether there is ground for instituting a denaturalization proceeding against him. *(Barnes)*

7. The decision of the Court of Appeals at New Orleans holding that the immigration authorities may subpoena a naturalized citizen for questioning to determine whether there is ground for instituting a denaturalization proceeding against him. *(Lansky)*

8. The decision of the Court of Appeals at San Francisco holding that no clear and present danger need be shown to sustain a prosecution for sending obscene materials through the mails. *(Schindler)*

9. The decision of the Court of Appeals at San Francisco holding that a defendant in a selective service prosecution has no right to examine the FBI report on his C.O. claim and introduce evidence to show that the résumé of the report that he had been given was not a fair one. *(White)*

10. The decision of the Court of Appeals at St. Louis that a federal criminal court can admit evidence obtained illegally by state officials. *(Jones)*

11. The decision of the Court of Appeals at Denver upholding the constitutionality of a Kansas statute which required that notice of eminent domain proceedings be given by only one publication in the official city paper. (To be appealed) *(Collins)*

12. The decision of the Court of Appeals in New York that a person can be punished criminally in the federal courts for a conspiracy to commit an act which is not a crime at all. *(Wiesner)*

13. The decision of the District Court in Washington, D.C., holding that no important federal constitutional questions were involved in the Post Office's ban on Aristophanes' "Lysistrata."

14. The decision of the District Court in the District of Columbia that an employee may be discharged who invokes the Fifth Amendment privilege against self-incrimination when questioned by a congressional committee investigating Communists, such discharge being one for "obvious cause." (To be appealed) *(General Electric)*

15. The decision of the District Court in San Francisco that a woman cannot be naturalized unless she would be willing to make or handle munitions. *(Scaccio)*

UNFAVORABLE—STATE COURTS

1. The decision of the Virginia Supreme Court of Appeals upholding the constitutionality of Virginia's anti-miscegenation law. (To be appealed) *(Naim)*

2. The decision of the Idaho Supreme Court holding constitutional

a state statute prohibiting the sale of intoxicating liquor to Indians. *(Rorwick)*

3. The 4-3 decision of the New York Court of Appeals upholding a conviction for first degree murder, though it was later shown that the sole eye witness to the murder had been psychotic, and that the brother of the deceased who quoted the victim as naming defendant as his killer had not been with the victim, and that the victim at that time could in all probability not have spoken. (To be appealed) *(Salemi)*

4. The decision of the Kentucky Court of Appeals affirming the setting of bail in a sedition case at $40,000, calculated solely by multiplying the number of years (15) of the sentence by a fixed figure ($2,500) for each year, and adding another $2,500. *(Braden)*

5. The decision of the California Supreme Court holding that a Communist can be discharged by an employer who makes drug products for civilian and military use even though the federal government does not require these workers to get security clearances. (To be appealed) *(Black* v. *Cutter Labs.)*

6. The decision of the California Supreme Court holding that a teacher could be asked whether he was even an innocent member of the Communist Party, though even such past admitted membership requires dismissal. (To be appealed) *(Steinmetz)*

7. The decision of the New Jersey Supreme Court upholding the constitutionality of the Communist Control Act of 1954 insofar as it bans the Communist Party from the ballot, the decision possibly resting on technical grounds. *(Salwin)*

8. The decision of the Supreme Judicial Court of Massachusetts holding that a teacher without tenure could be dismissed for refusal to answer a Senate sub-committee's questions on whether he had ever tried to recruit students in the Communist Party, for such refusal is considered conduct unbecoming a teacher, the teacher even if innocent becoming ineffective because of lack of public confidence. *(Faxon)*

9. The decision of the Supreme Judicial Court of Massachusetts that the failure of its Crime Commission statute to grant Commission witnesses immunity from federal prosecution does not invalidate its provision denying witnesses the right to withhold self-incriminating testimony. *(Cabot)*

10. The decision of the Supreme Court of Florida upholding the conviction of an author for contempt of court though the trial judge was permitted to try a contempt citation based on a charge that the defendant himself had made against the judge. *(Huie)*

11. The 6-1 decision of the Pennsylvania Supreme Court that the Congress ban on wiretapping does not bar use of wiretapped conversa-

tions as evidence in a Pennsylvania criminal trial. (To be appealed) *(Chaitt)*

12. The decision of the Supreme Court of Kansas holding constitutional a state statute requiring that notice of eminent domain proceedings be given by only one publication in the official city paper. (To be appealed) *(Walker)*

13. The decision of the Louisiana Supreme Court that that state's right to work law bars a union from picketing for a contract to make it an exclusive representative of all the employees in the plant. *(Piegts)*

14. The decision of the New Mexico Supreme Court holding that a state court could use in evidence against a person a blood sample taken from him while he was unconscious following an accident. *(Breithaupt)*

15. The decision of the Court of Appeals of Maryland that a union member in interstate commerce cannot sue the union in a state court for damages resulting from his wrongful expulsion from the union, but that he is limited to a proceeding before the NLRB which has a six months' statute of limitations. *(Sterling)*

16. The decision of a trial court in California holding that persons in the amusement industry could not sue those who had blacklisted them because of invocation of the Fifth Amendment privilege against self-incrimination before a congressional committee. *(Wilson* v. *Loew's)*

17. The conviction of Carl Braden in a trial court in Louisville, Kentucky, for sedition and criminal syndicalism, in a case in which a host of various civil liberties issues are involved. (see p. 123) (On appeal)

18. The conviction under the state statute for having been a Communist who knowingly contributed to the Party and failed to register under the Alabama Communist Registration Act of 1951. (To be appealed) *(Knox)*

19. The decision of a New York Supreme Court that the court could not, nor would it order the court stenographer to, furnish a newspaper with a copy of the jury charge given by the judge in a criminal case. *(New York Post* v. *Liebowitz)*

20. The decision of a New York Supreme Court holding that a person described in a book as a brother of a notorious Communist could not sue for libel. *(Pogany* v. *Chambers)*

*PENDING CASES**

*other than those listed in earlier sections as on appeal.

United States Supreme Court

1. An appeal from the decision of the U.S. Court of Appeals at Baltimore ordering desegregation at Baltimore city-owned bathing beaches and bath houses. *(Dawson)*

2. The appeal from the U.S. Court of Appeals in New Orleans upholding segregation of whites and Negroes on municipal golf courses in Atlanta. *(Holmes)*

3. An appeal from the decision of the Pennsylvania Supreme Court holding that the federal government has pre-empted the field of sedition and that therefore state sedition laws are invalid. *(Nelson)*

4. An appeal from the Court of Appeals in the District of Columbia holding that an ex-serviceman could be apprehended several years after a murder and taken back from the U.S. to Korea for trial by court-martial. *(Toth)*

5. The appeal from the decision of the U.S. Court of Appeals in Washington, D.C., holding constitutional those parts of the McCarran Internal Security Act of 1950 requiring groups found to be Communist-action organizations to register with the Attorney General. *(Communist Party* v. *Subversive Activities Control Board)*

6. A case testing the constitutionality of the Compulsory Testimony Act, which gives immunity from prosecution in exchange for compelling self-incriminating testimony. *(Ullman)*

7. An appeal from the decision of the Kansas Supreme Court holding constitutional Kansas's ban on the movie "The Moon Is Blue" because it was allegedly obscene, indecent and immoral.

8. An appeal from the decision of the New York courts upholding a dismissal of a college professor, without hearing, solely because he had relied on his privilege against self-incrimination in refusing to tell a Senate Judiciary Subcommittee whether he had been a member of the Communist Party in 1940 or 1941. *(Slochower)*

9. An appeal from the decision of the Court of Appeals in San Francisco holding that a person imprisoned under a death sentence had no right to a hearing on his charge that he had been deprived of his right to appeal because the prosecution knowingly conspired with the stenographer to submit an inaccurate record on appeal. *(Chessman)*

10. An appeal from the decision of the U.S. Court of Appeals at Philadelphia that an immigration officer has no authority to subpoena a naturalized citizen to testify in an administrative proceeding directed towards his denaturalization. *(Minkei)*

11. An appeal from the decisions of Pennsylvania courts holding that a young and unschooled defendant faced with life imprisonment could be sentenced to a lengthy jail term without benefit of counsel or being advised of his right thereto, the plea of guilty being secured through threats and physical assault. *(Herman)*

12. An appeal from the decision of the Michigan Supreme Court upholding the constitutionality of the Michigan one-man grand jury. *(Wade)*

13. An appeal from a decision of the U.S. Court of Appeals at Denver holding that evidence previously suppressed in a federal criminal trial, because obtained by federal officers in violation of the Fourth Amendment, could nonetheless be used in a state criminal trial. *(Rea)*

14. An appeal from a decision of an intermediate appellate court in California upholding a conviction for drunken driving notwithstanding the prosecution's use as evidence of a blood sample taken by police officers under protest. *(Walton)*

Lower Federal Courts

1. In a Court of Appeals in Illinois, an appeal testing the constitutionality of that part of the Smith Act making it a criminal offense to be a member of an organization advocating the violent overthrow of the government, knowing its purposes where the person intends to overthrow the government as speedily as circumstances would permit. (Similar cases pending in other federal district courts.) *(Lightfoot)*

2. On appeal before the Court of Appeals in San Francisco, an appeal from a decision of a lower federal court holding that a person could be sued for libel for having labelled as a lie charges contained in a wire to Congress that Senator McCarthy was a member of subversive organizations, and denying the opportunity to prove that his charge of lying was true and made without malice. *(Gerald L. K. Smith)*

3. In the U.S. Court of Appeals in the District of Columbia, an appeal from a decision of the District Court refusing to upset the discharge of James Kutcher after a finding of disloyalty though his job was non-sensitive, and he had not received details of charges or opportunity to contest listing of his organization as subversive. *(Kutcher)*

4. In the U.S. Court of Appeals in the District of Columbia, an appeal from a decision upholding the Post Office's ban on certain nudist magazines as obscene. *(Sunshine & Health)*

5. In the Court of Appeals in San Francisco, an appeal from the conviction of two Catholic conscientious objectors for refusing induction into the Armed Services, because according to officials, there is nothing in the teachings of the Catholic Church which gives foundation to these claims. *(Duffy* and *Willis)*

6. In the District Court in Washington, D.C., a case testing whether a serviceman could be given an undesirable discharge because of affiliations held before entry into the service despite excellent record in the service and willing disclosure of information about himself. *(Harmon)*

7. In the District Court in Washington, D.C., the trial for contempt of Congress of author Harvey O'Connor who refused on the grounds of the First Amendment and irrelevancy to answer whether he was or

ever had been a member of the Communist Party, when asked by Senator McCarthy's Subcommittee during an investigation of government libraries overseas, in which O'Connor's books had been used.

8. In a District Court in Illinois, a case testing whether motion picture projectionists may be enjoined from censoring the film "Salt of the Earth" by refusing to show it. *(IPC Distributors)*

9. In a District Court in Minneapolis, Minnesota, a petition for an injunction by a movie corporation to halt picketing by theater owners and associations. *(Columbia Pictures Corp.)*

State Courts

1. In the Kentucky Court of Appeals, an appeal from the conviction of Carl Braden for sedition.

2. In the Illinois Supreme Court, an appeal from a decision of a trial court refusing to grant a new trial to a man serving a life sentence for rape, when the only testimony against him was that of a woman later found to be suffering from schizophrenia with delusions and halucinations, who was peculiarly subject to making false sexual charges. *(Miller)*

3. In the Michigan Supreme Court, a decision on the constitutionality of Michigan's 1952 Trucks Act, which requires registration of Communist organizations as does the McCarran Internal Security Act of 1950. *(Albertson)*

4. In the Pennsylvania Supreme Court an appeal from a decision holding unconstitutional Pennsylvania's movie censorship law. ("She Shoulda Said No")

5. In the Kentucky Court of Appeals, an appeal from a decision which upheld the constitutionality of public school teachers wearing religious garb, and involving also the question of whether a person can be barred from public school teaching solely because of their membership in a religious order.

6. In the Supreme Courts of New Jersey and Washington and intermediate appellate courts in New York and California, cases testing the constitutionality of the Gwinn Amendment. *(Kutcher; Dailey; Peters; Cordova* and *Zumwalt)*

7. In intermediate appellate courts in California, four cases testing the constitutionality of that state's requirement of loyalty oaths for churches before they can get real estate property tax exemption.

8. In a trial court in Illinois, a decision on whether the movie "The Miracle" is obscene.

9. In the trial court in Massachusetts, trials of several defendants indicted under state sedition laws for conspiracy to advocate overthrow of the state. *(Struik-Hood)*

Part VI. STRUCTURE AND PERSONNEL

GENERAL MEMBERSHIP AND THE CORPORATION

General members are persons or organizations contributing annually two dollars or more, and students in schools or colleges—in groups of not less than 25—each contributing one dollar or more. The corporation is composed of members of the Board of Directors, the members of the National Committee, and the boards of the local affiliates (acting as units). The National Committee is elected by the general members, and the Board of Directors is elected by the National Committee and the other members of the corporation.

Corporation Officers

Chairman—Ernest Angell
Secretary—Katrina McCormick Barnes
Assistant Secretary—Herbert Monte Levy
Treasurer—B. W. Huebsch
Assistant Treasurers—John F. Finerty
Patrick Murphy Malin
Jeffrey E. Fuller
Executive Director—Patrick Murphy Malin

Board of Directors

Chairman—Ernest Angell
Honorary Chairman—John Haynes Holmes
Vice Chairmen—Morris L. Ernst, Dorothy Kenyon, J. Waties Waring
General Counsel—Edward J. Ennis, Osmond K. Fraenkel, Barent Ten Eyck

Mrs. Katrina McCormick Barnes
Daniel Bell
Charles G. Bolte
Mrs. Dorothy Dunbar Bromley
Earl Brown
Ralph S. Brown
Allan Knight Chalmers
Richard S. Childs
John F. Finerty
Walter Frank
Alexander H. Frey
Varian Fry
Lewis Galantiere
Walter Gellhorn
Quincy Howe
B. W. Huebsch
John Jessup
John Paul Jones
Murray Kempton
Alonzo F. Myers
Saul K. Padover
Elmer Rice
Norman Thomas
William L. White

National Committee

Chairman—E. B. MacNaughton

Vice Chairmen—Pearl S. Buck, Albert Sprague Coolidge, Lloyd K. Garrison, Frank P. Graham, Palmer Hoyt, Edward L. Parsons, Morris Rubin, Lillian E. Smith.

Sadie Alexander
Thurman Arnold
Bishop Chamberlain Baker
Roger N. Baldwin
Allan Barth
Francis Biddle
Prof. Julian P. Boyd
Van Wyck Brooks
Prof. James R. Caldwell
Dr. Henry Seidel Canby
Prof. Robert K. Carr
Stuart Chase
Grenville Clark
Dr. Rufus E. Clement
Prof. Henry Steele Commager
Morris L. Cooke
Prof. George S. Counts
Prof. Robert E. Cushman
Elmer Davis
Prof. J. Frank Dobie
Melvyn Douglas
Dr. Frederick May Eliot
Thomas H. Eliot
Walter T. Fisher
James Lawrence Fly
Dr. Harry Emerson Fosdick
Dr. Willard E. Goslin
Grover C. Hall, Jr.
Abram L. Harris
Prof. Mark DeW. Howe
Dr. Robert M. Hutchins
Dr. Charles S. Johnson
Gerald W. Johnson
Dr. Mordecai W. Johnson
Dr. Percy L. Julian
Benjamin H. Kizer
Dr. John A. Lapp
Prof. Harold D. Lasswell
Mrs. Agnes Brown Leach
Max Lerner
Prof. Robert S. Lynd
Prof. Archibald MacLeish
John P. Marquand
Prof. Robert Mathews
Dean Millicent C. McIntosh
Dr. Alexander Meiklejohn
Dr. Karl Menninger
Rev. Harry C. Meserve
Donald R. Murphy
Dr. J. Robert Oppenheimer
Bishop G. Bromley Oxnam
James G. Patton
A. Philip Randolph
Elmo Roper
Dr. John Nevin Sayre
Prof. Arthur Schlesinger, Jr.
Joseph Schlossberg
Dr. Edward J. Sparling
Prof. George R. Stewart
Mrs. Dorothy Tilly
Prof. Edward C. Tolman
William W. Waymack
Aubrey Williams
Dr. William Lindsay Young
Dean Benjamin Youngdahl

National Executive Staff

Executive Director—Patrick Murphy Malin

Assistant Directors—Alan Reitman
Jeffrey E. Fuller
Louis Joughin

Staff Counsel—Herbert Monte Levy

International Work Adviser—Roger N. Baldwin

Washington Office Director—Irving Ferman
(Room 601-2, Century Building
412 Fifth Street, N.W., Washington—REpublic 7-8123)

Personnel Changes

Board of Directors. Dr. John Haynes Holmes, because of ill health, resigned from active Board membership and was unanimously elected Honorary Chairman. Eight of the Board members listed in the 1953-54 *Report* are not now on the Board: Arthur Garfield Hays, who died in December 1954; Messrs. Cousins, Kerney, Northrup and Taylor, who requested not to be renominated because their work prevented their attending meetings; Mr. Williams, who resigned in 1955 for the same reason; Mr. Fly, who resigned in 1955 because of moving to Florida. The following nine members have been added:

Daniel Bell—labor editor, *Fortune* Magazine

Charles G. Bolte—executive secretary, American Book Publishers Council

Ralph S. Brown—professor of law, Yale Law School; chairman, New Haven CL Council

Allan Knight Chalmers—professor of preaching and applied Christianity, Boston School of Theology; chairman, CLUM

Alexander H. Fry—professor of law, University of Pennsylvania Law School; president, Greater Philadelphia Branch ACLU

Quincy Howe—radio news analyst, American Broadcasting Company

Murray Kempton—columnist, New York *Post*

Saul K. Padover—Dean, School of Politics, New School for Social Research

Barent Ten Eyck—attorney; newly-elected ACLU General Counsel

The Board now numbers 31 of a maximum 35 provided under the by-laws.

National Committee. E. B. MacNaughton, a member of the National Committee since 1953, was elected Chairman in 1954. Six of the members listed in the 1953-54 *Report* are not now on the Committee: Earl G. Harrison, who died in July, and Robert Sherwood, who died in November, 1955; Allan Knight Chalmers and Quincy Howe who resigned to become members of the Board of Directors; Mike Masaoka, who asked not to be renominated because of pressure of other work; and Bishop William Scarlett whose term expired in 1954.

The following four members have been added:

Rufus E. Clement—president, Atlanta University (Georgia)

Grover C. Hall, Jr.—publisher, *The Montgomery Advertiser* (Alabama)

Mark DeW. Howe—professor of law, Harvard University (Mass.)

Harry S. Meserve—pastor, First Unitarian Church of San Francisco (Calif.)

The National Committee numbers 74 of a maximum 100 provided under the by-laws.

Officers. Because of the death of Arthur Garfield Hays and the subsequent resignation of Morris L. Ernst, both of whom had been General Counsel for the Union for many years, the Board of Directors in October of this year elected the following three General Counsel: Edward J. Ennis, Osmond K. Fraenkel, Barent Ten Eyck. The Board elected as Vice Chairmen: Mr. Ernst, Judge Dorothy Kenyon and Judge J. Waties Waring.

Staff. There has been only one staff change. Louis Joughin, formerly Research Director, was named Assistant Director with responsibility for operating relations between the national office and affiliates, state correspondents and cooperating attorneys, and for the annual report and topical publications; he also coordinates the Union's work in the academic freedom and the religion, church-state, areas.

NEW AFFILIATES

The ACLU is happy to welcome the following new affiliates to membership in the Corporation (dates indicate when the national Board of Directors voted formal recognition):

Fairfield County Chapter, Connecticut, May 1955
ACLU of Greater Miami, June 1955
Kentucky Chapter, December 1955
ACLU of Oregon, December 1955
ACLU of Pennsylvania, January 1955

Like all other affiliates, except Northern California, these new groups operate on a basis of integrated membership and finance. This means that all ACLU members in their respective areas belong to both the local chapter and to the national organization, and that the local group shares in all contributions received by the national ACLU from its area.

ACLU AFFILIATES

California

American Civil Liberties Union of Northern California*
503 Market Street San Francisco 5
Rt. Rev. Edward L. Parsons, Chairman; Ernest Besig, Director
Chapter in Marin County

Southern California Branch, ACLU*
5927 Sunset Boulevard, Los Angeles 28
Charles Mackintosh, Acting President; Eason Monroe, Executive Director

Colorado

Colorado Branch, ACLU
1870 Broadway, Denver 2
Arnold Alperstein, Chairman; Harold V. Knight, Executive Director
Chapter in Boulder

*Connecticut***

Fairfield County Chapter, ACLU
Sidney S. Postol, Random Road, Bridgeport 29, Chairman

Hartford Chapter, ACLU
Robert Satter, 111 Lafayette Avenue, Hartford 6, Chairman

New Haven Civil Liberties Council
Prof. Ralph S. Brown, Jr., Yale Law School, New Haven, Chairman

Florida

ACLU of Greater Miami
Rev. Edward W. Ullrich, Chairman; Richard K. Fink, 605 Lincoln Road, Miami Beach, Secretary

Illinois

Illinois Division, ACLU*
19 South LaSalle Street, Chicago 3
Rev. Arthur Cushman McGiffert, Chairman; Kenneth Douty, Executive Director

Indiana

Indiana Civil Liberties Union
P.O. Box 6147, Indianapolis 20
Merle H. Miller, Chairman; Miss Jeanette Berman, Executive Secretary
Chapter in South Bend

Iowa

Iowa Civil Liberties Union
4211 Grand Avenue, Des Moines 12
Kenneth Everhart, Chairman; Miss Garnet Guild, Secretary

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* Indicates a full-time office is maintained.

** A state-wide Connecticut affiliate is now being organized.

Kentucky

Kentucky Chapter, ACLU
Patrick S. Kirwan, Acting Chairman; Arthur S. Kling, 1917 Maplewood Place, Louisville 5, Secretary-Treasurer

Maryland

Maryland Branch, ACLU
10 East Centre Street, Baltimore 2
Fred E. Weisgal, Chairman, Executive Board

Massachusetts

Civil Liberties Union of Massachusetts*
14 Beacon Street, Boston 8
Dr. Albert Sprague Coolidge, Chairman; Luther K. Macnair, Director

Chapters in Hampden, Hampshire and Worcester Counties

Michigan

Metropolitan Detroit Branch, ACLU
Rev. Edgar M. Wahlberg, Chairman; Walter Bergman, 2747 Oakman Court, Detroit 38, Secretary

Minnesota

Minnesota Branch, ACLU
SOS, TSMc, 15th and Washington Avenues, S.E. Minneapolis 14
Earl R. Larson, President; Robert C. McClure, Secretary-Treasurer

Missouri

St. Louis Civil Liberties Committee
Dr. Samuel Guze, President; Miss Gene Krummenacher, 6030 Kingsbury Avenue, St. Louis 12, Secretary

New York

New York Civil Liberties Union*
170 Fifth Avenue, New York 10
Charles A. Siepmann, Chairman; George E. Rundquist, Executive Director
Chapter in Queens

Niagara Frontier Branch, ACLU
Dr. Kurt P. Tauber, 186 Capen Boulevard, Buffalo, Chairman

Ohio

Ohio Civil Liberties Union*
740 West Superior Avenue, Cleveland 13
Oscar H. Steiner, Chairman; William Sanborn, Executive Director
Chapters in Akron, Cincinnati, Cleveland, Columbus, Dayton, Oberlin, Toledo, Yellow Springs and Youngstown

Oregon

ACLU of Oregon
Judah Bierman, Chairman; Jonathan U. Newman, Secretary
P.O. Box 774, Portland 7

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* Indicates a full-time office is maintained.

Pennsylvania

ACLU of Pennsylvania*
260 South 15 Street, Philadelphia 2
Alexander H. Frey, President; Spencer Coxe, Executive Director
Chapter in Pittsburgh

Greater Philadelphia Branch, ACLU*
260 South 15 Street, Philadelphia 2
Alexander H. Frey, President; Spencer Coxe, Executive Director

Washington

State of **Washington Chapter, ACLU**
1114 Thirty-seventh Avenue North, Seattle 2
Rev. Aron S. Gilmartin, Chairman; R. Boland Brooks, Executive Secretary

Wisconsin

Wisconsin Civil Liberties Union
408 West Gorham Street, Madison 3
Morris H. Rubin, Chairman; Mrs. Virginia Hart, Secretary

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* Indicates a full-time office is maintained.

STATE CORRESPONDENTS

(In states and territories where the Union does not have organized local branches, these correspondents assist the ACLU by securing information and giving advice on local matters. They do not represent the Union officially.)

Alabama—Morrison B. Williams, Route 1, Box 15, Autaugaville
Alaska—Victor Fischer, 1601 F Street, Anchorage
Arizona—C. M. Wright, 128 North Church Avenue, Tucson 1
Arkansas—Georg G. Iggers, 1118 Izard Street, Little Rock
Delaware—William Prickett, 404 Equitable Building, Wilmington
Georgia—William V. George, 47 Oak Street, Forest Park
Hawaii—Miss Mildred Towle, YWCA, 1040 Richards Street, Honolulu
Idaho—Alvin Denman, Idaho Falls
Kansas—Raymond Briman, New England Building, Topeka
Louisiana—George A. Dreyfous, 1609 National Bank of Commerce Building, New Orleans
Maine—Prof. Warren B. Catlin, Bowdoin College, Brunswick
Mississippi—Jo Drake Arrington, 411 Hawes Building, Gulfport
Montana—Leo C. Graybill, 609 Third Avenue North, Great Falls
Nebraska—Prof. Frederick K. Beutel, U. of Nebraska, College of Law, Lincoln
Nevada—Martin J. Scanlan, 130 South Virginia Street, Reno
New Hampshire—Winthrop Wadleigh, 45 Market Street, Manchester
New Jersey—Emil Oxfeld, 744 Broad Street, Newark 2
New Mexico—Sumner Stanley Koch, 1306 Galisteo Parkway, Santa Fe
North Carolina—James Mattocks, Professional Building, High Point
North Dakota—Harold W. Bangert, 404 Black Building, Fargo
Oklahoma—Rev. Frank O. Holmes, First Unitarian Church, Oklahoma City
Puerto Rico—Guillermo Cintron Ayuso, P.O. Box No. 4566, San Juan
Rhode Island—Milton Stanzler, 1019 Hospital Trust Building, Providence 3
South Carolina—John Bolt Culbertson, P.O. Box 1325, Greenville
South Dakota—Tom Kirby, Western Surety Building, Sioux Falls
Tennessee—Jordan Stokes III, 315 Warner Building, Nashville
Texas—Prof. Clarence E. Ayres, University of Texas, Austin 12
Utah—Prof. Charles P. Larrowe, University of Utah, Salt Lake City
Vermont—Louis Lisman, 166 College Street, Burlington
Virgin Islands—George H. T. Dudley, Box 717, Charlotte Amalie, St. Thomas
Virginia—Moss A. Plunkett, Box 492, Roanoke
West Virginia—Horace S. Meldahl, P.O. Box 1, Charleston
Wyoming—Rev. John P. McConnell, 408 South 11th Street, Laramie

Part VII. MEMBERSHIP AND FINANCES

Fiscal Year February 1, 1954, through January 31, 1955

The membership enrollment of the national ACLU and its integrated affiliates reached the highest point in the Union's 35-year history on January 31, 1955: a net total of almost 30,000. This is 20% over the 1954 figure, 100% over the 1952 number, and three times the 1950 enrollment.

The fiscal year's basic membership income was more than $265,000—a 23% rise over the previous year's, and greater than the earlier years' in the same proportion as indicated for membership growth in the paragraph above.

The threefold growth since 1950 is due to: (1) the decision by the national Board and staff to give greater emphasis to membership recruitment in budget-making than theretofore; (2) the adoption of the integrated affiliate plan (about 3,400 of the new members recorded as gained in 1951 and 1952 had previously been separate members of various affiliates prior to integration); (3) the growing awareness throughout the nation of the importance of civil liberties; and (4), last but not least, the loyal support of the Union's members themselves, who renew their dues and contribute to special appeals with remarkable enthusiasm—proof of this is the extremely low membership loss rate, which has averaged only 7% in the last five years.

The total income for 1954-55 (including about $7,000 profit on the sale of securities, $4,500 in bequests, etc.) was $278,253. Expenditures, some $4,500 greater than income, totaled $282,716, about $17,500 over 1953-54's. Transfers to integrated affiliates of their share of membership income from their respective areas amounted to $95,129, $21,500 above 1953-54's.

The $4,500 excess of outgo over income reduced the Union's reserve fund from about $61,000 at the start of the twelve months to $56,500 at the end. (Most of this reserve is actually needed in the form of cash to get the ACLU through its eight relatively "lean" income months when expenditures are normally greater than monthly income.)

A record 7,190 new members were enrolled during the fiscal year, and 2,265 (only 7%) had to be dropped from the rolls as deceased, resigned, or delinquent in dues—for a net gain of 4,925. On January 31, 1955, enrollment stood at 29,903. (The Northern California branch,

which maintains its membership separate from the national organization's, had over 3,000 members of its own. Thus, the Union altogether had about 33,000 members in early 1955.)

The average member contributed $8.86. Approximately 20% of the Union's members contributed under $5, 50% between $5 and $9, 25% between $10 and $24, 3% between $25 and $49, 1% between $50 and $99, and 1% $100 and over. Contributors of $200 or more during the 1954-55 fiscal year were:

William Prescott Allen, Texas; Amalgamated Clothing Workers of America, New York; Isaac Anderson, New York; Mrs. Evelyn P. Baldwin, New York; Mrs. Helen D. Marston Beardsley, California; Miss Julia C. Bryant, Connecticut; Mrs. Esther Smith Byrne, California; Mr. and Mrs. Roger S. Clapp, Massachusetts; Miss Fanny Travis Cochran, Pennsylvania; William B. Collins, California; Edward T. Cone, New Jersey; Professor and Mrs. Albert Sprague Coolidge, Massachusetts; the Rev. Stephen T. Crary, Massachusetts; Mrs. Margaret DeSilver, New York; Mrs. Thomas M. Dillingham, California; Robert T. Drake, Illinois; Edward J. Ennis, New York; Henry G. Ferguson, District of Columbia; Walter T. Fisher, Illinois; Mrs. Stanton A. Friedberg, Illinois; Lewis S. Gannett and E. Carlton MacDowell (in memory of Mrs. Mary Gannett), New York; Miss Gloria Gartz, California; Mr. and Mrs. Josiah W. Gitt, Pennsylvania; Richard Grumbacher, Maryland; Mrs. Donald M. Harris, New York; Mr. and Mrs. Gilbert Harrison, District of Columbia; Mr. and Mrs. George H. Hogle, New York; B. W. Huebsch, New York; International Ladies Garment Workers Union, New York; Mrs. William Korn (for the Mayer Family), New York; John Frederick Lewis, Jr., Pennsylvania; Mrs. V. S. Littauer, New York; Mr. and Mrs. Patrick Murphy Malin, New York; Mrs. John E. Mayer, New York; Thomas D. McBride, Pennsylvania; Merle H. Miller, Indiana; Dr. Francis S. North, California; Dr. Linus Pauling, Jr., Territory of Hawaii; George D. Pratt, Jr., Connecticut; Mrs. Jane A. Pratt, Connecticut; H. Oliver Rea, New York; Miss Charlotte Rosenbaum, Illinois; R. H. Scott, California; A. Joseph Seltzer, Michigan; Henry W. Shelton, California; Herbert M. Singer, New York; Mrs. Eleanor Lloyd Smith, California; Oscar H. Steiner, Ohio; J. David Stern, New York; Mr. and Mrs. Robert C. Stover, New York; Percy S. Straus, Jr., Texas; Mr. and Mrs. Lee B. Thomas, Jr., Kentucky; Miss Anne L. Thorp, Massachusetts; Mr. and Mrs. Frank Untermyer, Illinois; Mr. and Mrs. Henry B. Veatch, Indiana; George Weiner, Illinois; Norman Williams, Jr., New York; and Mrs. Betty Zukor, California. Three anonymous contributions of $200 each, one of $250, one of 490.29, and three of $500 each were also received.

Aside from the ACLU's regular operations, the Maxine Hilson Estate Trust Fund, set up to pay Mr. Baldwin's part-time salary as International Work Adviser, showed a book value net loss of $1,652 (as usual, part of the principle of this Fund was used, in addition to income). Also, the Union supervised the expenditure of $1,425 allocated by the Robert Marshall Civil Liberties Trust for disbursement in accordance with the Trust's specific instructions on legal fees and expenses in certain civil liberties cases of the Trust's own choosing.

Membership and Finance, 1955-56 Fiscal Year

33,400 was the enrollment of the national ACLU and its integrated affiliates on November 30, 1955—a net gain of 3500 in the first ten months of the fiscal year. Membership income February 1 through November 30 totalled $221,500, some 23% ahead of the corresponding figure last year. If—and it is no small if—efforts now under way to maintain this 23% rate of growth during December and January are successful, the resulting $106,000 income for these last two months will mean that the Union can end its 1955-56 fiscal year on January 31 firmly in the black, having met its 1955-56 $325,000 budget entirely from current income, and can enter 1956-57 with a cash reserve large enough to serve as a base for taking on additional civil liberties work.

1954-55 MEMBERSHIP ENROLLMENT

NUMBER OF MEMBERS FEBRUARY 1, 1954		24,978
New members enrolled during fiscal year	7,190	
Dropped: deceased, resigned, delinquent, etc.	2,265	
Net increase during fiscal year		4,925
NUMBER OF MEMBERS JANUARY 31, 1955		29,903

1954-55 FINANCIAL REPORT

INCOME	*Number*	*Amount*
New members' initial contributions	7,190	$ 42,111.38
Membership renewals	17,827	173,454.07
Special Funds contributions	4,889	49,524.49
TOTAL MEMBERSHIP INCOME	29,906	$265,089.94
Investment income (net: less expenses)		469.34
Profit on sale of securities (net)		6,909.45
Executive Director's honorariums		150.00
Sale of pamphlets		1,136.45
Bequests from the estates of former members:		
Mrs. Evelyn T. D. Morley	$ 2,362.96	
Ummo Franklin Luebben	2,000.00	
William Warder Norton	135.12	
		4,498.08
TOTAL, ALL INCOME		$278,253.26

EXPENDITURES

GENERAL OPERATIONS

SALARIES of five executives and two executive assistants		$ 48,954.35
SALARIES of fifteen clerical employees		45,935.88
OTHER ADMINISTRATIVE EXPENSES		
Rent	$ 5,585.00	
Equipment and repairs	1,764.25	
Stationery	3,679.01	
Office supplies and services	5,285.20	
Lettershop services	1,388.01	
Postage	8,245.04	
Telephone and telegraph	3,779.95	
Board meetings	468.93	
Executive Director's travel	567.22	
National Committee elections	602.86	
Books, subscriptions, clippings, etc.	1,375.76	
Payroll taxes and insurance	4,043.81	
Auditor	1,800.00	
Bank charges	721.88	
Interest on loan	608.90	
		$39,915.82
MEMBERSHIP SERVICES		
Civil Liberties monthly paper	$ 4,726.38	
1953-54 Annual Report	4,500.00	
Separable membership maintenance services	2,191.56	
New membership recruitment, total costs	10,268.30	
Special Funds appeals, total costs	4,593.35	
		$26,279.59

SPECIFIC ACTIVITIES

CASES AND CAUSES		
Neal Death Sentence Appeal, Utah state courts, federal courts, U.S. Supreme Court	$ 458.61	
Braden Case (due process and free speech), Kentucky courts	275.80	
Emspak Case (free speech, First Amendment), U.S. Supreme Court	173.26	
Bendik Case (double jeopardy), U.S. Court of Appeals, Second Circuit	141.15	
Naim Case (testing Virginia's anti-miscegenation law), Virginia Supreme Court	100.00	
Twenty-eight actions under $100	766.41	
		$ 1,915.23
EDUCATION		
Analysis of *American Legion Magazine* article attacking ACLU	$ 335.00	
Congressional Record reprint of Senator Wayne Morse's speech on wiretapping	272.48	
"Academic Due Process," ACLU pamphlet	230.50	

"Academic Freedom and Academic Responsibility," ACLU pamphlet reprint	130.00	
Nine reprints under $100	242.22	
Public Relations Committee	236.57	
		$ 1,446.77
FUNCTIONAL COMMITTEES		
Indian Civil Rights Committee	$ 415.96	
Academic Freedom Committee	346.96	
Radio Committee	167.90	
Labor Civil Rights Committee	166.76	
Due Process and Equality Committee	160.96	
National Council on Freedom from Censorship	133.65	
Three committees expending under $100	100.75	
		$ 1,492.94
INTERNATIONAL CIVIL LIBERTIES		369.73
WASHINGTON, D.C.		
ACLU Washington office: executive salary, clerical salary, rent, telephone, expenses, etc.	$16,422.70	
Contribution to budget of National Civil Liberties Clearing House	1,250.00	
		$17,672.70
NATIONAL OFFICE AFFILIATE EXPENDITURES		
Biennial Conference, February 1954	$ 2,863.36	
Other expenditures: travel, etc.	740.39	
		$3,603.75
TRANSFERS TO INTEGRATED AFFILIATES of their share of all contributions (except those specially earmarked) received by the national ACLU from members in their respective areas. Detailed financial reports may be obtained from the affiliates themselves.		
Illinois Division	$20,921.30	
Southern California Branch	19,230.29	
New York Civil Liberties Union	17,154.20	
Greater Philadelphia Branch	13,750.00	
Civil Liberties Union of Massachusetts	7,694.09	
Ohio Civil Liberties Union	7,215.66	
Indiana Civil Liberties Union	3,001.62	
Colorado Branch	1,165.00	
State of Washington Chapter	803.00	
Maryland Civil Liberties Committee	772.74	
Metropolitan Detroit Branch	772.55	
St. Louis Civil Liberties Committee	675.36	
Minnesota Branch	633.57	
Iowa Civil Liberties Union	466.03	
Wisconsin Civil Liberties Union	334.99	
New Haven Civil Liberties Council	250.85	

Hartford Chapter	154.05	
Niagara Frontier Branch (Buffalo)	133.45	
		$ 95,128.75
EXPENDITURES, GRAND TOTAL		$282,715.51

BALANCE SHEET

as of January 31, 1955

ASSETS		
Cash	$36,253.87	
Airlines deposit	425.00	
Loans receivable:		
Illinois Division	2,600.00	
Ohio Civil Liberties Union	2,600.00	
Civil Liberties Union of Massachusetts	2,400.00	
Greater Philadelphia Branch	2,325.00	
Accounts receivable	37.37	
Investments	5,581.01	
Furniture and fixtures	6,000.00	
TOTAL ASSETS		$ 58,222.25
LIABILITIES		
Accounts payable	$ 91.15	
Withholding and payroll taxes payable	1,404.96	
Robert Marshall Civil Liberties Trust: special loyalty-security case reserve	241.28	
TOTAL LIABILITIES		$ 1,737.39
NET WORTH		
Net worth as of February 1, 1954	$60,947.11	
LESS excess of expenditures over income	4,462.25	
Balance, Net Worth, January 31, 1955		$ 56,484.86
TOTAL, LIABILITIES AND NET WORTH		$ 58,222.25

Baldwin Salary Section

(Maxine Hilson Estate)

NET WORTH (cash and investments) February 1, 1954		$ 39,766.20
Net income from investments	$ 1,948.09	
Paid: Mr. Baldwin's part-time salary	3,600.00	
EXCESS of expenditures over income		1,651.91
NET WORTH, January 31, 1955		*$ 38,114.29

* This figure includes investments at book value. When investments are counted at their January 31, 1955 market value, the Net Worth is $52,158.32.

In November and December 1954 the Union received over fifty contributions totaling more than $600 from her friends and admirers all over the country in memory of the late Mrs. Emily Elsas Wolf of Larchmont, N.Y. These contributions are included in the Special Funds income reported on page 138.

Certificate

In our opinion the accompanying balance sheets and statements of income and expenditures, subject to adjustments for the differences between the book and market values of the securities held, present fairly the financial position of the American Civil Liberties Union, Inc., at the close of business January 31, 1955, and the results of its operations for the fiscal year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

APFEL AND ENGLANDER
Certified Public Accountants

A copy of the complete auditor's report will be sent on loan to any member on request. The ACLU's financial and accounting methods are endorsed by the National Information Bureau, 205 East 42nd Street, New York 17, N.Y., a private agency organized to help maintain sound standards in philanthropy and to provide contributors with information and advice.

Contributions to the American Civil Liberties Union are not deductible for income tax purposes since the Treasury Department has held that a "substantial part" of the Union's activities is directed toward influencing legislation. The ACLU itself pays no taxes other than Social Security, Old Age Benefit and Workmen's Compensation levies in connection with its employees' salaries.

ACLU PUBLICATIONS AVAILABLE — JANUARY 1956

You may order by number from ACLU at 170 Fifth Avenue, New York 10, N.Y. *All prices are postpaid* Quantity price schedule, in general: 25 or more copies—deduct 20% from single copy price; 100 or more—deduct 40%. *Single copies of any available pamphlets will be mailed free to contributing members (dues of $5 and up) on request. Please indicate membership category when ordering.*

1. CLEARING THE MAIN CHANNELS, ACLU's 1954-55 Annual Report. 144 pp. 50¢

2. THE BILL OF RIGHTS (suitable for framing). 1956, 4 pp. Free

3. HOW GOES THE BILL OF RIGHTS?, by Patrick Murphy Malin. 1953, 2 pp. 5¢

4. THE PEOPLE'S RIGHT TO KNOW, A Report on Government News Suppression, by Allen Raymond. 1955, 48 pp. 35¢

5. THE STATES AND SUBVERSION, on state loyalty laws. 1953, 12 pp. 20¢

6. ARTHUR GARFIELD HAYS 1881-1954. Tribute by Roger Baldwin. 1954, 4 pp. Free

7. ACADEMIC FREEDOM: SOME RECENT PHILADELPHIA EPISODES, published by Greater Philadelphia Branch, ACLU. 1954, 36 pp. 25¢

8. ANTI-COMMUNISM AND CIVIL LIBERTIES, by Bishop Bernard J. Sheil. 1954, 6 pp. 5¢

9. IF YOU ARE ARRESTED, published by New York Civil Liberties Union and N.Y. City Bar Assn. 1955, 4 pp. Free

10. THE SUPREME COURT AND CIVIL LIBERTIES, by Osmond K. Fraenkel. 1955, 106 pp. 50¢

11. ACADEMIC DUE PROCESS. On procedures in academic freedom cases. 1955, 8 pp. 10¢

12. ACADEMIC FREEDOM AND ACADEMIC RESPONSIBILITY. Statement of principles. 1953, 16 pp. 10¢

13. CENSORSHIP OF COMIC BOOKS. 1955, 16 pp. 15¢

15. AMERICA'S NEED: A NEW BIRTH OF FREEDOM. ACLU's 1953-54 Annual Report. 128 pp. 50¢

16. TWENTY QUESTIONS ON CIVIL LIBERTIES. An ACLU quiz. 1956, 2 pp. Free

17. DEMOCRACY IN LABOR UNIONS. ACLU report and policy statement. 1952. 16 pp. 25¢

18. CONFORMITY IN THE ARTS, by Elmer Rice. On current trends in censorship. 1953, 4 pp. 5¢

19. WE HOLD THESE TRUTHS: FREEDOM — JUSTICE — EQUALITY. ACLU's 1951-53 Report. 160 pp. 50¢

20. THE PROBLEM OF CENSORSHIP IN PUBLIC LIBRARIES, by Luther H. Evans, former Librarian of Congress. 1954, 1 p. Free

23. COMMUNISM AND CONFORMITY, by George F. Kennan. 1953, 1 p. 5¢

24. HAVE WE THE COURAGE TO BE FREE?, by Arthur Hays Sulzberger. 1953, 8 pp. 10¢

25. CIVIL LIBERTIES AND THE INTERNATIONAL SCENE. Summary of major human rights issues before the U.N. 1953, 4 pp. 5¢

26. STRONG IN THEIR PRIDE AND FREE, by Harry P. Cain (a condensation). 1955, 6 pp. 5¢

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Published by Others, *Distributed* by ACLU

30. THE TYRANNY OF GUILT BY ASSOCIATION, by Sen. Richard L. Neuberger. *Sidney Hillman Foundation.* 1955, 11 pp. 5¢

31. STRONG IN THEIR PRIDE AND FREE, by Harry P. Cain, full text reprinted from *Congressional Record.* 1955, 15 pp. 5¢

32. IS WIRETAPPING JUSTIFIED?, by Patrick Murphy Malin. From *Annals of American Academy of Political and Social Science.* 1955, 7 pp. 10¢

33. THE ALTERNATIVE, by Archibald MacLeish. *Roger N. Baldwin Civil Liberties Foundation.* 1955, 16 pp. 25¢

34. DILEMMAS OF LIBERALISM, by Francis Biddle. *Baldwin Foundation* 1953. 24 pp. 25¢

35. THIRTY-FIVE YEARS WITH FREEDOM OF SPEECH, by Zechariah Chafee, Jr. *Baldwin Foundation.* 1952, 40 pp. 25¢

36. FREEDOM — FOR WHAT?, by Ralph Barton Perry. *Baldwin Foundation.* 1954, 13 pp. mimeographed. 25¢

37. FAIR INVESTIGATING PROCEDURES WILL CHECK McCARTHY. *Congressional Record* reprint of speeches by Senators Herbert H. Lehman and Wayne Morse. 1954, 7 pp. 5¢

39. DON'T TAP THE BILL OF RIGHTS, by Irving Ferman. On wiretapping. From *Machinists Monthly Journal.* 1954, 2 pp. 5¢

42. PRESIDENT TRUMAN'S VETO MESSAGE ON INTERNAL SECURITY ACT. From *Cong. Record.* 1950, 4 pp. 5¢

44. UNIVERSAL DECLARATION OF HUMAN RIGHTS. *United Nations.* 1948, 8 pp. 5¢

45. IT CAN BE DONE! On ending segregation in public schools. *NAACP.* 1955, 12 pp. 5¢

48. PRESENTING THE INTERNATIONAL LEAGUE FOR THE RIGHTS OF MAN, with which the ACLU is affiliated. 1952, 6 pp. Free

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ACLU members of the following classification receive *Civil Liberties* each month and this 1954-55 Annual Report (and future annual reports), and are entitled to single copies of some 25 pamphlets currently available:

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CONTRIBUTING MEMBER	$5

Associate Members at $2 receive *Civil Liberties* and the annual report. Weekly bulletin is available on request to contributors of $10 and over.

Members living in the following states and areas also belong to the respective local ACLU organization, without payment of additional dues: *Southern California, Colorado, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, Ohio, Oregon, Pennsylvania, Washington (state), Wisconsin, and Greater New York, Philadelphia, St. Louis, Detroit, Buffalo, Miami, Hartford, New Haven, and Fairfield County, Conn.* If you live in one of these states or city areas, your chapter will automatically receive a share of your contribution. (The same applies to all new branches organized.) The more you give the larger its share. *Be as generous as you can!*

AMERICAN CIVIL LIBERTIES UNION
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See Membership Blank On Page 144

*If you already belong, won't you pass this Annual Report on to a friend, when you have finished it, urging him or her to *join the ACLU.*

BEQUESTS TO THE ACLU

During the past five years the American Civil Liberties Union has received by bequest a total of $82,000 from the estates of twenty-eight members. The legacies ranged in amount from $25 to $25,000.

The Union regards such gifts with special pride and with a special sense of obligation, because this money represents the final dedication of these ACLU members to the preservation of civil liberties in our democracy.

Members desiring to mention the Union in their Wills may wish to use this language: "I give $..... to the American Civil Liberties Union, Inc., a New York corporation."

Price of this pamphlet: 50¢ postpaid.
For quantity prices, see page 143.